CITATION: Attorney General for Ontario v. Information and Privacy Commissioner, 2020 ONSC 5085
DIVISIONAL COURT FILE NO.: 456/19
DATE: 20200827

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

Swinton, Penny and Kristjanson JJ.

BETWEEN:	
Attorney General for Ontario Applicant	Judie Im and Nadia Laeeque for the Applicant
– and –	
Information and Privacy Commissioner and Canadian Broadcasting Corporation Respondents	William S. Challis for the Information and Privacy Commissioner Justin Safayeni and Spencer Bass for the Canadian Broadcasting Corporation
– and –	
Centre for Free Expression, Canadian Journalists for Free Expression, The Canadian Association of Journalists and Aboriginal Peoples Television Network Intervenors	Daniel Sheppard for the Intervenors
	HEARD: May 21, 2020

Penny J.

Overview

[1] In this application the Attorney General for Ontario seeks judicial review of Order PO – 3973, made on July 15, 2019 by Brian Beamish, the Information and Privacy Commissioner of Ontario, under the *Freedom of Information and Protection of Privacy*

Commissioner of Ontario, under the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31. In this Decision the IPC ordered disclosure to the requester, Canadian Broadcasting Corporation, of mandate letters from the Premier, Doug Ford, to each of his ministers who, together with the Premier, comprise the Executive Council. The Cabinet Office opposed disclosure on the basis of the Cabinet privilege exemption under s. 12(1) of the Act.

[2] There are three issues to be resolved on this application for judicial review:

(1) the standard of review;

(2) whether the IPC's interpretation and application of s. 12(1) of the Act was unreasonable; and

(3) whether the IPC imposed an unreasonable burden of proof on the Cabinet Office.

[3] For the reasons that follow, I find that the standard of review is reasonableness and that the Decision was reasonable. The application for judicial review is therefore dismissed.

Background

[4] The mandate Letters which are at the heart of this application are addressed to each minister and set out the policy priorities of the Premier with respect to each minister's mandate. They include the Premier's advice, instruction and guidance to each minister in carrying out his or her ministerial duties and responsibilities.

[5] A journalist with the CBC made an application under the Act for disclosure of the Letters. The Cabinet Office opposed disclosure, relying on the introductory wording of the Cabinet records exemption under s. 12(1) of the Act, which provides that, "A head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of the Executive Council or its committees…". While subparagraphs 12(1)(a) to (f) enumerate specific records that are exempt from disclosure, it is common ground that none of these specific subparagraphs are applicable in this case. Thus, the issue to be determined before the IPC turned on the introductory language of s. 12(1).

[6] Cabinet Office's position was that the disclosure of the Letters would reveal the substance of deliberations: 1) of the Premier in setting Cabinet's policy priorities which are inherently part of the deliberative process of Cabinet; 2) at the initial meeting of Cabinet where the Letters were first delivered to each minister; and 3) at future Cabinet meetings where the policy priorities set out in the Letters would be further discussed.

[7] The parties engaged in a lengthy process of written submissions to the IPC. Following deliberation, the IPC issued lengthy and detailed reasons, in which he found that disclosure of the mandate Letters would not reveal the substance of any Cabinet deliberations and so he ordered that the Letters be released.

[8] In his decision, the IPC found that the applicable test was whether disclosure of the Letters would reveal the substance of deliberations of Cabinet or its committees or would permit the drawing of accurate inferences with respect to those deliberations. The IPC further found that for the exemption in the introductory words of s. 12(1) to apply, the institution had the evidentiary burden of establishing a "linkage" between the content of the record and the actual substance of Cabinet deliberations, past or future. There is no controversy about these principles.

[9] The IPC found that the introductory words of s. 12(1) were not intended to protect the "outcome" of a deliberative process but rather communications within the deliberative process itself. The IPC found that because the Letters did not reveal any details about meetings, discussions, issues, opinions or consultations relating to the formulation of the Premier's policy priorities and goals, or the Cabinet's consideration of them, the Letters were more appropriately considered the endpoint or the product of the Premier's deliberations and were therefore not exempt.

[10] The IPC also found that the Letters being placed before Cabinet provided some, but not necessarily determinative, evidence that disclosing the Letters would reveal the substance of deliberations of Cabinet. Because the Letters did not reveal any views, opinions, thoughts, ideas or concerns expressed by Cabinet ministers (or any *deliberations* by the Premier for that matter), in the absence of any evidence of what transpired at the meeting, the Letters could only be considered "at best" to contain" topics" that may have arisen at the Cabinet meeting. There was no such evidence of what transpired at the meeting.

[11] Finally, the IPC found that the limited evidence available established only that the subject matter of some unspecified policy initiatives identified in the Letters would, assuming they were pursued, likely be considered at some point in future Cabinet meetings. However, the IPC concluded that this was insufficient to bring the Letters within the protection of s. 12(1). The IPC found that making accurate inferences about the substance of future deliberations would require the substance of any minister's actual proposals, plans for implementation or the results of consultations, program reviews or opinions, none of which was put before the IPC in support of the Cabinet Office's position.

Analysis of the Issues

[12] As noted earlier, there are three issues to be resolved on this application for judicial review.[1]

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[1] Counsel for the IPC filed a factum which, although addressing standard of review, was almost entirely focused on the merits of the IPC's Decision. The Court questioned whether this was appropriate in light of the factors set out in para. 59 of the decision of the Supreme Court of Canada in *Ontario Energy Board v. Ontario Power Generation Inc.*, 2015 SCC 44, [2015] S.C.R. 147, and declined to hear oral submissions from counsel for the IPC on issues other than standard of review.

Standard of Review

[13] The analysis of the standard of review starts with a presumption that "reasonableness" is the applicable standard. This presumption is rebuttable in two instances: 1) where the legislature has chosen a different standard (usually by way of appeal); and 2) where the "rule of law" requires a standard of correctness, *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65 at para. 17.

[14] The Attorney General argues that the rule of law exception applies in this case. The interpretation of s. 12(1) of the Act involves Cabinet privilege and confidentiality, issues which have significant legal consequences for the justice system as a whole and for other institutions of government.

[15] I cannot agree.

[16] This case involves a straightforward issue of statutory interpretation of one specific provincial statute and the scope and application of the s. 12(1) protection against disclosure to specific documents. The rule of law exception is not engaged simply because "the question, when framed in a general or abstract sense, touches on an important issue," *Vavilov* para. 61. There is no issue of the "rule of law" or of constitutional law engaged in this case which removes the analysis from the presumed standard of reasonableness.

[17] Reasonableness is the appropriate standard of review in this case. The reasonableness review finds its starting point in judicial restraint and respects the distinct role of administrative decision-makers.

Was the IPC's Interpretation of s. 12(1) Unreasonably Narrow and Restrictive?

[18] The fundamental precepts of statutory interpretation which are applicable in this case are not controversial. The modern approach to statutory interpretation requires the words of an enactment to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of the legislature. The underlying purpose of this Act as a whole is to facilitate transparency and promote accountability in government. The underlying purpose of the exemption under s. 12(1) is to promote free and frank discussion among Cabinet members without concern for the chilling effect that might result from disclosure of their statements or the material on which they were deliberating.

[19] It is also accepted by the parties and the IPC that in order for the exemption under s. 12(1) to apply, disclosure of the record must "reveal the substance of deliberations" of Cabinet or "permit the drawing of accurate inferences" about past or future Cabinet deliberations. It is also accepted that the use of the term "including" in the introductory words of s. 12(1) means that any record which would reveal the substance of deliberations or permit the drawing of accurate inferences qualifies for the exemption; the specifically enumerated categories of record in subparagraphs (a) to (f) must be interpreted as providing an expanded definition of, or at the very least the removal of any ambiguity about, the types of records that are exempt from disclosure.

[20] Notwithstanding these broad areas of interpretive agreement, the Attorney General submits that the IPC's interpretation of s. 12(1) and its application to the Letters was unreasonable in three respects:

(a) the IPC erred by not recognizing that the Letters revealed the Premier's own deliberations, which form part of the deliberative process of Cabinet;

(b) the Letters were distributed at a Cabinet meeting and it is reasonable to infer that they were discussed at that meeting; and,

(c) the content of the Letters necessarily discloses the substance of, or permits accurate inferences about, deliberations that will take place at future Cabinet meetings.

I will address each of these arguments below.

(a) The Letters Reveal the Premier's Deliberations Which Form Part of the Deliberative Process of Cabinet

[21] The Attorney General submits that the IPC found that the policy initiatives and goals contained in the Letters were "outcomes" of the Premier's deliberations and as such were not protected by s. 12(1). In doing so, the Attorney General argues that the IPC failed to follow established principles of statutory interpretation and interpreted s. 12(1) narrowly and restrictively with no regard to its statutory purpose or the need for harmonious interpretation within the legislative scheme, specifically with regards to subs. 12(1)(a) and s. 18(1)(g) of the Act. Section 12(1)(a) requires a refusal to disclose where the record is "an agenda, minute or other record of the deliberations or decisions of the Executive Council or its committee". Section 18(1)(g) provides that a head "may refuse to disclose a record that contains…information including the proposed plans, policies or projects of an institution where the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person".

[22] The Attorney General argues that the only government policy initiatives that are not shielded by the s. 12(1) exemption are those that are actually implemented or otherwise made public, including bills tabled in the legislature, regulations made and published in the Ontario Gazette or programs publicly implemented by a ministry. Specifically, it is argued that subparagraph 12(1)(a) exempts records of deliberations "or decisions" of Cabinet, thus explicitly contemplating that *decisions* of the Premier, as first Minister, and of his Cabinet, are part of the substance of deliberations. Similarly, the Attorney General argues that subparagraph 18(1)(a) of the Act expressly exempts from disclosure policies that have been finalized (hence "outcomes") but not yet announced, in order to protect against the premature disclosure of government policy.

[23] The Attorney General also argues that the IPC's approach took an unreasonably narrow view of the meaning of deliberative process. The Attorney General submits that the Premier's articulation of policy priorities is a step in Cabinet's deliberative continuum and should not be seen as the culmination of the government's policy decision-making. The

deliberative process of the Executive Council does not cease once the Premier establishes and communicates his policy priorities to ministers through the Letters. The policy priorities will involve further deliberation and decision-making by Cabinet in future. The Attorney General relies on Order PO – 1725, in which the IPC held that the deliberations of the Premier in establishing and expressing priorities cannot be separated from the deliberations of Cabinet because of the Premier's unique agenda-setting role within that body.

Analysis

[24] I cannot agree with the Attorney General that there is any fundamental error in the interpretation of the Act. In my view this is entirely a case of the application of well-settled principles to the particular facts. The burden of proof was undeniably on the government to demonstrate that the Letters fell within the s. 12(1) exemption. The government chose to enter as evidence only the Letters themselves and a heavily redacted copy of the agenda for the meeting at which the Letters were, apparently, delivered. The IPC simply held that, on this record, the government had failed to satisfy its evidentiary burden. This is a sufficiency of evidence case, nothing more.

[25] I do not read, nor should the IPC Decision be read, to mean that there is some fundamental opposition or divide between an "outcome" and the "substance of deliberations". In other words, the characterization of something as an "outcome" should not be understood *necessarily* to mean that disclosure of the thing cannot be revelatory of the "substance of deliberations." All the IPC concluded in this Decision, however, is that the "outcome" of the Premier's Letters did not, as a matter of fact based on the evidence in this case, disclose the substance of any deliberations of the Premier or of Cabinet.

[26] The Decision does not undermine the protection given to a "record of the…decisions" of Cabinet under subparagraph 12(1)(a). The Decision does not concern subparagraph 12(1)(a) at all; it is concerned only with the introductory language of s. 12(1). The same analysis applies to subparagraph 18(1)(g). It is conceded that neither provision is engaged in the circumstances of this case.

[27] Further, it is settled law that subparagraphs 12(1)(a) to (f) were included to "clarify that the exemption applies to specific types of records that might otherwise be thought to fall outside the opening words of s. 12(1) because they do not obviously 'reveal the substance of deliberations of the Executive Council'", Order PO – 3973 at para. 102. In other words, the IPC determined, reasonably in my view, that subparagraphs 12(1)(a) to (f) extend the Cabinet records exemption to specific records that might not otherwise fall within the opening words of 12(1). If the record does not appear in subparagraphs 12(1)(a) to (f), it will only qualify for the exemption "if the context or other information would permit accurate inferences to be drawn as to actual Cabinet deliberations at a specific Cabinet meeting", Order PO – 3973 at para. 101.

[28] With respect to the exemption in s. 18(1)(g), the IPC recognized that this section was designed to serve a different purpose than s. 12(1) – to protect against premature disclosure

of a pending policy decision or undue financial benefit or loss. There was no evidence of any pending policy decision or of any risk of undue financial benefit or loss.

[29] As to the Attorney General's "continuum" argument, the introductory words of s. 12(1) do not protect all records leading up to any particular government decision; they protect the substance of deliberations of Cabinet (which includes, as found previously by the IPC, the Premier's deliberations in setting Cabinet's priorities). The Letters, on their face however, do not disclose or invite any deliberative process. The Cabinet Office's own submissions describe the Letters as "the *culmination* of an extensive deliberative process by the Premier [that] reflect his/her *determination*, as first minister, of the priorities of the new government" (emphasis added). In the absence of any other evidence, the IPC's conclusion that the Letters do not disclose deliberative processes was a reasonable one.

[30] I also agree with counsel for the respondent CBC that the Attorney General's approach to the introductory language of s. 12(1) would "lead to a far broader application of section 12(1) than could have been intended, with the result that all records revealing the policy initiatives of Cabinet or the Premier would be exempt pursuant to the introductory wording in section 12(1)", regardless of whether they actually disclosed the substance of any deliberations or permitted accurate inferences to be drawn as to Cabinet deliberations at any Cabinet meeting.

[31] The decision of the IPC in Order PO – 1725 does not support the Attorney General's argument. Again, this is on essentially factual and evidentiary grounds. In Order PO – 1725, the IPC found that the Premier's "consultations with a view to establishing Cabinet priorities are an integral part of Cabinet's substantive deliberative process" and that the records reflecting those "consultations" constitute the "substance of deliberations". It was this deliberative or consultative aspect of the Premier's priority-setting process which lay at the heart of the IPC's decision in that case. There is no evidence of any such consultative or deliberative process in establishing the Premier's priorities here. In fact, in Order PO – 1725, the IPC specifically found that (apart from the formal agenda document itself) the *subject matter* of items considered or to be considered by Cabinet will not "normally be found to reveal the substance of Cabinet deliberations, unless either the context or other additional information would permit the reader to draw accurate inferences" as to actual deliberations which took place at a particular Cabinet meeting.

(b) <u>It Is Sufficient for the Protections of s. 12(1) to Apply that the Letters were Distributed at the Initial Cabinet Meeting?</u>

[32] The Attorney General argues that s. 12(1) must be read broadly to include the "body of information" that has been or will be presented to Cabinet in making any decision. The Attorney General is critical of the IPC's reliance on the "*O'Connor* balancing approach", a reference to the decision of the Nova Scotia Court of Appeal in *O'Connor v. Nova Scotia,* 2001 NSCA 132.

[33] First, the Attorney General submits that in *O'Connor*, the court *rejected* the requirement for evidence that the records were actually placed before the full Cabinet and actually

revealed the views of Cabinet in order for the Cabinet records exemption to apply. Rather, the court found that evidence that the records were *given* to subcommittees of Cabinet was sufficient to meet the test. The Attorney General submits that it was reasonable, in the circumstances of this case, *to infer* that the Letters were placed before Cabinet, were discussed and that disclosure of them would therefore reveal the substance of deliberations of Cabinet.

[34] Second, the IPC expressly rejected CBC's submission that it should limit the application of s. 12(1) to records which permit accurate inferences to be drawn regarding discussions "examining and weighing the reasons for and against a contemplated act or course of action". Having rejected this narrow approach, however, the Attorney General argues that the IPC then relied upon the same rejected definition to unreasonably determine that the disclosure of the Letters would not reveal the substance of deliberations because they do not reveal any discussions of the pros and cons of a particular course of action.

[35] Finally, while accepting that the substance of deliberations could include "views, opinions, thoughts, ideas, and concerns expressed by Cabinet ministers during the course of Cabinet's deliberative process", the IPC unreasonably failed, in the specific context of this case, to consider that the Premier is also a minister of Cabinet and that the substance of *his* deliberations would be revealed by disclosure of the Letters.

Analysis

[36] The *O'Connor* case, like Order PO – 1725, turns on its particular facts. Critical to understanding the result in *O'Connor* is that there was affidavit and *viva voce* evidence from the assistant deputy minister of finance that the records at issue were submitted to three cabinet subcommittees, that each subcommittee member was given a binder containing parts of those records and that the subcommittees made recommendations to cabinet relating to those programs as part of the budget process. As noted earlier, no such evidence exists here. All that was before the IPC in this case was a single, heavily redacted agenda and the Letters themselves. It was on the strength of this evidence alone that counsel for the government asserted that it was "reasonable to expect" certain unspecified aspects of the Letters "would have" been discussed at the initial Cabinet meeting.

[37] As is often said, inferences must be grounded in evidence from which the suggested inference may reasonably be drawn. Inferences unsupported by evidence, or which do not reasonably follow from the established facts, are mere speculation.

[38] Regarding the meeting agenda itself, the subject of the Letters does not appear in the numbered list of agenda items (there are seven, all completely redacted). Rather, reference to the Letters appears at the end of the agenda under a heading "Chair Notes: Mandate Letters".

[39] Nothing about the content of this Note supports an inference that the mandate Letters were discussed at the Cabinet meeting. Rather, if anything, the content of the Note suggests the opposite.

[40] As noted earlier, the Letters themselves do not suggest they are drafts subject to negotiation or in any way invite dialogue about their content. While it may be true that some of the mandates identified would likely require a return to Cabinet at some future time, this is nowhere specified or contemplated.

[41] In these circumstances, there was a clear evidentiary basis to reject the Attorney General's argument that it was "reasonable to expect" certain unspecified aspects of the Letters "would have" been discussed at the initial Cabinet meeting. The IPC's decision to do so was not unreasonable.

[42] In arguing that the IPC contradicted itself and acted unreasonably in both concluding that, as a matter of law, the protection of s. 12(1) was not restricted only to "examining and weighing the reasons for and against a contemplated act or course of action", but yet considering whether disclosure of the Letters would, in fact, reveal the Cabinet's examination and weighing of the reasons for adopting or rejecting the mandates, the Attorney General has confused an issue of statutory interpretation with an issue of relevance of evidence. There is nothing inconsistent about the IPC's Decision. The legal test for protection is broader that just the 'weighing of reasons for and against a contemplated act or course of action' but, whether the documents in question actually reveal the weighing of reasons for and against a contemplated act or not is still a potentially relevant inquiry in the overall assessment about whether the s. 12(1) exemption applies. This finding was merely one of many findings the IPC made to support its ultimate conclusion that merely producing a copy of the redacted agenda did not satisfy the government's burden of proof to meet the test in the opening words of s. 12(1).

[43] The Attorney's third argument under this head, the issue of the deliberations of the Premier himself, has already been addressed under the first ground of judicial review. The IPC's Decision considered this issue. Its rejection of this argument, in the circumstances of this case, was not unreasonable.

(c) Letters Necessarily Disclose the Content of Future Cabinet Deliberations

[44] The IPC accepted in its Decision that records that have never been placed before Cabinet or its committees *may* still qualify for exemptions under the introductory words of s. 12(1) "if the context or other information would permit the drawing of accurate inferences with respect to deliberations." In respect of records that are said to reveal the substance of *future* deliberations, however, the institution must establish a link between the content of the record and the substance of the Cabinet deliberations. The Attorney General accepts that this is the relevant test but argues that it was unreasonable for the IPC to go on to require evidence that the Letters themselves would be placed before Cabinet in future meetings.

[45] The Attorney General also argues that the IPC imposed an unreasonably stringent test around the level of specificity required in the evidence as to the content of future deliberations. Given that the deliberations are by definition going to take place in the future and may involve multiple priorities identified in each Letter provided to multiple members of Cabinet, it was unreasonable and impossible for the Cabinet Office to provide examples

of specific material that would relate to each specific policy initiative at a specific future meeting.

Analysis

[46] Here again, the Attorney General has misconstrued a *finding* made by the IPC as if it were a *legal test* applied by the IPC.

[47] I do not read the IPC Decision as requiring evidence that the Letters themselves would be placed before specific future Cabinet meetings in order to satisfy the opening words of s. 12(1). Indeed, the IPC Decision expressly recognized that this is not the test.

[48] It is true that the IPC noted the lack of evidence that the Letters themselves would be placed before Cabinet in future meetings but, as the Decision makes clear, this came up in the context of responding to the Cabinet Office's reliance on *Aquasource Ltd. v. British Columbia (Information and Privacy Commission)* (1998), 58 B.C.L.R. (3d) 61 (B.C.C.A.), which invited consideration of this very issue. Put another way, the IPC concluded that, even if the broadly framed test set out in *Aquasource* applied (that the "substance of deliberations" encompasses the body of information which Cabinet considered (or would consider in the case of submissions not yet presented) in making a decision) the mandate Letters did not meet this test.

[49] Again, the IPC based this conclusion on an assessment of the evidence. The IPC simply found that the Cabinet Office had not discharged its burden to prove a link between the Letters and the substance of future Cabinet decisions. Given the paucity of evidence provided by the Cabinet Office, this was not an unreasonable conclusion.

[50] A similar analysis applies to the Attorney General's second argument under this head. The IPC clearly considered the Cabinet Office's submission that specified policy priorities would require a return to Cabinet at some point in the future. The IPC determined that the link between the Letters and future Cabinet deliberations was too weak, speculative and remote to permit accurate inferences to be drawn. At best, he concluded, the Letters "may be said to reveal the subject matter of what may come back to Cabinet for deliberation at some point in the future". But, he went on, they "do not reveal the substance of any minister's actual proposals or plans for implementation, or the results of any consultations or program reviews and options".

[51] The IPC's reasoning on this point is founded on two key, well-recognized, principles. First, disclosing the *subject matter* of deliberations generally does not necessarily amount to disclosing the *substance* of those deliberations. This is a proposition with strong roots in past decisions of the IPC and one recognized in information and privacy-related jurisprudence across Canada. Second, the mere fact that records may, at some indeterminate point in the future, inform Cabinet deliberations in some unspecified way, is not sufficient to bring them within the scope of the opening words of s. 12(1). Order PO – 1725, a decision that the Cabinet Office accepts as "authoritative", establishes the test as follows: whether someone could "draw accurate inferences as to the actual deliberations

occurring at a specific Cabinet meeting". Even assuming, therefore, that the identified policy priorities would be discussed to some degree in some future Cabinet meeting, the IPC found the Letters are articulated at such a high level and in such general terms as to be properly characterized as "subject matters" and "topics" for future deliberation, not disclosure of any deliberations themselves.

[52] There was ample evidence to support the IPC's analysis of the "policy priorities at future Cabinet meetings" issue. The conclusion was the result of the IPC's application of well settled principles to that evidence. I can find no basis to conclude that the IPC acted unreasonably in reaching its conclusion.

Was the Standard of Proof Imposed by the IPC Unreasonable?

[53] The IPC found that the introductory words "would reveal" in s. 12(1) of the Act reflect a standard of proof on a balance of probabilities. This is a standard of proof, the Attorney General concedes, that is higher than the standard of proof that applies to the words "could reasonably be expected to" in the Act. The Attorney General argues, however, that the IPC then proceeded to apply an overly stringent standard of proof, "seemingly higher than a balance of probabilities," by requiring evidence of actual Cabinet discussions at the initial Cabinet meeting and not accepting, as sufficient, evidence that the Letters were distributed at that meeting.

[54] In this context, the Attorney General repeats several of its arguments under the first ground of review, to the effect that it was unreasonable to require "stringent" evidence that the Letters would be placed before Cabinet at future meetings or evidence or other material related to specific policy initiatives to be placed before Cabinet at future meetings and that the Letters are a "communication" by the Premier to members of Cabinet reflecting "the making of government decisions and the formulation of government policy."

Analysis

[55] There is no merit to the Attorney General's argument on this issue. The IPC clearly recognized, and applied, the correct standard of proof – it was the government's onus to demonstrate that it met the requirements to come within the s. 12(1) exemption on a balance of probabilities. The Attorney General's submission amounts to no more than an invitation for this Court to re-weigh the evidence and overturn the findings of the IPC with which the Cabinet Office disagrees. The IPC identified the correct legal principles, applied them to the interpretation of the opening words of s. 12(1), reviewed the record and the submissions before him in light of that legal test and explained the basis for his decision in thorough and cogent reasons. There was nothing unreasonable about the IPC's approach to or conclusions on the standard of proof.

Conclusion

[56] For the foregoing reasons, I conclude that the IPC Decision was not unreasonable. The application for judicial review is dismissed.

Costs

[57] As agreed between the parties, costs are payable to the CBC by the Attorney General in the amount of $17,000 inclusive of all fees, disbursements and applicable taxes.

Penny J.

I agree

Swinton J.

I agree

Kristjanson J.

Released: August 27, 2020

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Applicant

– and –

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– **and** –

Centre for Free Expression, Canadian Journalists for Free Expression, The Canadian Association of Journalists and Aboriginal Peoples Television Network

Intervenors

REASONS FOR JUDGMENT

Penny J.

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