

In the Court of Appeal of Alberta

Citation: Campbell v Alberta (Public Interest Commissioner), 2026 ABCA 184

Date: 20260601

Docket: 2403-0163AC

Registry: Edmonton

Between:

Mary Lynne Campbell

Respondent

- and -

Alberta (Public Interest Commissioner)

Appellant

The Court:

**The Honourable Justice Jolaine Antonio
The Honourable Justice William T. de Wit
The Honourable Justice Joshua B. Hawkes**

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice J.S. Little
Dated the 21st day of June, 2024
Filed on the 13th day of September, 2024
(2024 ABKB 372, Docket: 2303 01187)

Memorandum of Judgment

The Court:

I. Overview

[1] This is an appeal of a judicial review decision quashing a report of the Public Interest Commissioner of Alberta. The fundamental issue in this case is the relationship between the legislative objective of protecting employees who make disclosures and participate in investigations under the *Public Interest Disclosure (Whistleblower Protection) Act*, SA 2012, c P-39.5 [*PIDA*] and the duty of procedural fairness.

[2] A disclosure was submitted under *PIDA* alleging wrongdoing by the respondent Mary Lynne Campbell. The Commissioner's office investigated the disclosure and issued two investigation summaries. The summaries described information gathered from various witnesses but did not disclose their identities. The respondent asserted she could not provide a complete response without knowing the identities of the witnesses. The Commissioner ultimately issued a report concluding the respondent had committed wrongdoing contrary to section 3(1)(c)(iii) of *PIDA*. The Commissioner was empowered to make recommendations for corrective measures but declined to do so because the respondent had retired.

[3] The respondent applied for judicial review of the Commissioner's report. She argued the Commissioner breached the duty of procedural fairness by not disclosing the identities of the witnesses. She also argued the Commissioner was biased and his report was substantively unreasonable.

[4] The judicial review judge found the refusal to disclose witnesses' identities was a breach of the duty of procedural fairness and quashed the Commissioner's report. While he found it unnecessary to decide the issues raised regarding bias and substantive unreasonableness, he nevertheless stated the Commissioner should have been skeptical of the disclosure because it employed statutory language. The judicial review judge declined to remit the matter to the Commissioner for reconsideration, in part because the subject workplace is now functioning well.

[5] The Commissioner appeals, saying the judicial review judge erred in determining the content of the duty of procedural fairness in the circumstances. He submits the procedure afforded the respondent was appropriate given the legislative context. The respondent argues the judicial review judge correctly decided that the procedure was deficient such that there is no need for appellate intervention. Alternatively, should this Court find there was no procedural deficiency,

the respondent maintains that the Commissioner's report should nevertheless be quashed because the investigation was biased and the resulting report was substantively unreasonable.

[6] We have concluded the appeal should be allowed. As we will explain, the judicial review judge incorrectly assessed the content of the duty of procedural fairness in the circumstances. Protecting the identity of the whistleblower and witnesses was consistent with the duty of procedural fairness imposed under *PIDA*. Moreover, neither the judicial review judge's concerns nor the respondent's complaints about the investigation give rise to a reasonable apprehension of bias, and the Commissioner's report was substantively reasonable.

II. Preliminary issue: privative clause

[7] Section 52(1) of *PIDA* provides, in part, that "except on the ground of lack of jurisdiction, no proceeding or decision of the Commissioner shall be challenged, reviewed, quashed or called into question in any court".

[8] Below, both parties submitted the issue of procedural fairness is a question of jurisdiction, such that the privative clause would not apply to prevent judicial review of that issue in this case. The judicial review judge accepted those submissions. He did not address the effect the privative clause may have on the respondent's other allegations.

[9] The effect of privative clauses is contentious and nuanced. Chief Justice de Montigny of the Federal Court of Appeal recently addressed the issue in *Democracy Watch v Canada (Attorney General)*, 2024 FCA 158 at paras 28-78 [*Democracy Watch*]; see also *Northback Holdings Corporation v Alberta Energy Regulator*, 2025 ABCA 186 at paras 130-241 per Khullar CJA (dissenting) and *Yatar v TD Insurance Meloche Monnex*, 2024 SCC 8 at para 50. In January, the Supreme Court heard an appeal of the decision in *Democracy Watch* and reserved judgment.

[10] We need not address the effect of the privative clause in this case because, regardless of its effect, the outcome of this appeal is the same. If the privative clause bars review, then the Commissioner's report stands. If the privative clause does not bar review, then we would analyse the issues as explained in the remainder of these reasons. The result of that analysis is also that the Commissioner's report stands.

[11] In this context, and given that it was not the focus of the arguments before us, we decline to opine on the effect of section 52(1) of *PIDA*.

III. Standard of review

[12] On appeal from a judicial review decision, this Court steps into the shoes of the lower court and performs a *de novo* review such that the focus is, in effect, on the administrative decision: *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 36; *Northern Regional Health Authority v Horrocks*, 2021 SCC 42 at para 10.

[13] Questions of procedural fairness are reviewed to determine if the party received the degree of procedural fairness to which they are entitled by law: *Westcan Recyclers Ltd v Calgary (City)*, 2025 ABCA 67 at para 25; *Sandhu v College of Physicians and Surgeons of Alberta*, 2023 ABCA 61 at para 36; *Magneson v Alberta Securities Commission*, 2023 ABCA 348 at para 4. The standard of review to be applied to the substance of the Commissioner's report is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16-17, 23 [Vavilov].

IV. Procedural fairness

A. Overview

[14] The duty of procedural fairness in this case, when assessed properly with a view to the legislative objective of protecting employees and in light of other relevant factors, did not require the Commissioner to disclose the identities of the whistleblower and witnesses interviewed. Contrary to the conclusion reached by the judicial review judge, the respondent received the degree of procedural fairness to which she was entitled by law.

B. Background

[15] In July 2018, the respondent was appointed superintendent of the Sturgeon School Division, a public school authority serving Sturgeon County and surrounding areas north of Edmonton.

[16] In May 2021, a whistleblower submitted a disclosure, alleging the respondent had committed wrongdoings within the meaning of *PIDA*. Among other things, she alleged the respondent grossly mismanaged employees by a pattern of behaviour or conduct of a systemic nature that indicated a problem in the culture of the organization relating to bullying, harassment or intimidation. She wrote, "I have absolutely no voice unless I agree with her completely. If I disagree, I get yelled at. I get belittled".

[17] In July 2021, the Commissioner provided a notice of investigation to the respondent, advising her that an allegation of wrongdoing had been submitted. The identity of the whistleblower was not disclosed. The notice stated an investigation would be conducted into the following issue:

Whether [the respondent] grossly mismanaged employees by a pattern of behaviour or conduct of a systematic nature that indicates a problem in the culture of the [Division] relating to bullying, harassment or intimidation under section 3(1)(c)(iii) of the *Public Interest Disclosure (Whistleblower Protection) Act*.

[18] An investigator interviewed 34 current and former Division employees. The employees were asked general questions concerning the culture and atmosphere of the Division as well as

whether they had experienced or witnessed any instances of bullying, harassing, or intimidating behaviour within the Division, but were not told the respondent was the alleged wrongdoer.

[19] In October 2021, the respondent went on medical leave. She provided notice of her intention to retire from the Division in 2022.

[20] In November 2021, the investigator provided the respondent a document titled “Investigation Summary”. The summary stated it was “not a decision of the Commissioner” and was intended to afford the respondent “the opportunity to review the preliminary investigative findings, and to provide a response”. Identifying information was “genericized to protect the identity of the complainant and interviewees”.

[21] Under the heading, “Investigative Findings”, the investigator summarized and aggregated various aspects of the interview evidence, including evidence related to the culture of the organization (e.g., “Thirty-one witnesses... expressed the culture of the Division is one of fear”), the employee turnover rate (e.g., “Seventy-two percent of the witnesses... described the employee turnover rate at that time [as] ‘extremely high,’ ‘tremendous,’ and ‘significant’”), employee autonomy (e.g., “Nineteen witnesses described [the respondent’s] management style as ‘micromanagement,’ with some verbalizing she is ‘militaristic,’ and ‘has to control’ and ‘have her hands in everything’”), workplace communication (e.g., “Twenty-four percent... reported that all communications must first go through” the respondent), employee reprimands (e.g., one witness stated the practice of issuing letters of reprimand was “frequent, overt, and used to intimidate employees”), the respondent’s conduct (e.g., “Twenty employees expressed concern that [the respondent] utilizes various tactics of intimidation to bully individuals or assert control over employees”), work demands (e.g., “Sixteen witnesses raised concerns about the work demands placed on employees by” the respondent), and the effects of the respondent’s conduct on employees (e.g., “Thirteen witnesses reported that [the respondent’s] behaviours have led to employees becoming afraid of asking questions and voicing opinions”). Evidence regarding specific events relayed by the witnesses was also summarized.

[22] Under the heading, “Analysis”, the investigator indicated there was “evidence supporting the allegation against” the respondent. The investigator concluded:

The repeated ongoing pattern of behaviour, as described by witnesses, is indicative of deliberate and willful conduct. A reasonable person would view these behaviours, as reported, as objectionable and offensive, and would not view [the respondent’s] conduct as proper management practices. These accounts were not the perspective of a small number of individuals, but rather from a significant number of current and former employees within the Division’s head office and schools.

[23] The respondent was initially given 30 days to respond. Her counsel requested an extension, asserting she was not medically able to work on a response. The Commissioner extended the deadline to April 2022.

[24] In April 2022, counsel for the respondent wrote to the Commissioner, expressing various concerns about the fairness of the procedure followed. Counsel asserted there were “obvious issues of collusion and credibility” and an “apparent pre-judgment”. He asserted there were “significant limitations” on the respondent’s ability to respond, emphasizing that the investigation summary did not “indicate who the allegations relate to, what context the allegations arose in, nor when they arose”. The respondent was left “to speculate about who might have made a particular statement over the course of three years of employment”. Counsel also asserted it was “essential that the investigation provide an opportunity for an oral hearing”.

[25] Counsel enclosed a 157-page “partial response” from the respondent, providing a paragraph-by-paragraph response to the investigation summary, along with a number of exhibits. In most cases, the respondent detailed why the allegations set out in the paragraph or sub-paragraph were “factually incorrect”. In many cases, her response included the assertion that, without specific details, she was left to speculate and was unable to provide a complete response. Generally, she stated she was “friendly to all”, treated “everyone equally and with respect”, and did “not bully, harass or intimidate staff”. She explained she had been directed by the board to change the culture of the Division, which it considered to be “one of entitlement and ennui”. She asserted the allegations against her were coordinated by individuals who were unhappy with the changes she had implemented at the board’s direction.

[26] Counsel for the respondent asked the investigator to contact and interview several additional witnesses. The investigator had already contacted two of these witnesses, and a number of the requested witnesses declined to be interviewed. The investigator determined one witness did not have relevant information. The remaining six additional witnesses were interviewed.

[27] On May 16, 2022, the Commissioner’s director of investigations wrote to counsel for the respondent, enclosing a supplemental investigation summary, summarizing the results of the additional interviews. The investigator accepted that all witnesses were credible. She again provided summaries regarding culture (e.g., “Four of the six witnesses described the culture of the Division as one of fear and intimidation”), turnover (e.g., “All of the witnesses expressed concern at the high employee turn-over rate”), autonomy (e.g., “Three witnesses described [the respondent] as having little to no trust in employees’ decision-making abilities or autonomy”), communication (e.g., “Four witnesses observed that under [the respondent’s] leadership, the Division was not an environment that allowed for open dialogue”), reprimands (e.g., “Two witnesses stated that [the respondent] was punitive and ‘over-punished’ or ‘overreacted’ to employee mistakes”), conduct (e.g., “Four witnesses reported that [the respondent] often asserted her dominance over employees during Administrative Council Meetings”), and effects (e.g., “All witnesses stated that [the respondent’s] behaviours have led to employees being fearful in the workplace, intimidated, or

experiencing anxiety”). As with the first investigation summary, details were also provided of specific examples relayed by the witnesses. Also as with the first summary, identifying information was “genericized” to protect witnesses’ identities.

[28] The director of investigation’s cover letter acknowledged the respondent’s concerns regarding a “lack of specifics”, but explained, “Whistleblowers and witnesses must feel confident that they can speak openly and frankly with the Commissioner’s investigators without fear of their identity becoming known”, with the result that “the identities of whistleblowers and witnesses are not disclosed”. The director said the investigative process established by the Commissioner did “not provide for oral hearings”.

[29] On May 25, 2022, counsel for the respondent responded, reiterating among other things his concern about his client’s ability to respond properly. Counsel acknowledged that “anonymity of sources is an important part of any whistleblowing program”. Nevertheless, he submitted that in the respondent’s case, where “various allegations are being made by dozens of anonymous individuals about specific interactions with those very people”, “without disclosure of the identities of the witnesses, dates, and details of the interactions, it is impossible for [the respondent] to respond effectively”. The respondent replied to the specific allegations set out in the supplementary summary. In a number of instances, the respondent asserted it was “impossible to respond... without additional information”.

C. The Commissioner’s report

[30] On December 28, 2022, the Commissioner issued a report concluding the respondent had committed wrongdoing contrary to section 3(1)(c)(iii) of *PIDA*.

[31] The Commissioner explained his decision to protect the identities of the whistleblower and witnesses:

Witness and whistleblower confidentiality is a foundational pillar of the whistleblowing regime under the Act. Nevertheless, investigations under the Act must balance the confidentiality of any witness or whistleblower with the procedural fairness obligations owed to alleged wrongdoers. To achieve this balance, the Investigation Summary and the Supplemental Investigation Summary provided to Ms. Campbell contained the substance of the evidence against her and as much detail as possible respecting specific incidents as could be provided without compromising the identity of individuals who cooperated with my office.

The Commissioner acknowledged the respondent could not meaningfully respond to some of the allegations without knowing the identity of the witnesses. The Commissioner wrote, in those cases, “when making my decision I neither considered the evidence nor the allegations the evidence related to”.

[32] The Commissioner stated he assessed the credibility of witnesses' evidence by reviewing summaries of individual interviews and considering the witnesses' ability to recall events, the likelihood of their version of events, consistency with other accounts, as well as the investigator's assessment of their demeanour. He found all witnesses, including the respondent, were credible. The Commissioner did not give weight to any evidence that was not corroborated.

[33] The Commissioner found, based on the witnesses' evidence, that the respondent had engaged in conduct she knew or ought to have reasonably known was objectionable, unwelcome, and humiliating or would otherwise intimidate employees; she was responsible for a culture of fear; she engaged in a pattern of behaviour that created a widespread problem throughout the Division; and her conduct was deliberate and showed a reckless or wilful disregard for proper management. In coming to these conclusions, the Commissioner identified specific points of evidence. He considered the respondent's evidence but gave it less weight. He explained that, while the respondent's belief that her management style was appropriate may have been genuine, it was contrary to "the vast weight of evidence obtained during the investigation".

[34] The Commissioner concluded the respondent had grossly mismanaged employees through a pattern of behaviour or conduct of a systemic nature that resulted in a problem in the culture of the Division with bullying, harassment, and intimidation within the meaning of section 3(1)(c)(iii) of *PIDA*. He decided not to make any recommendation for corrective measures specific to the respondent, as she was no longer employed by the Division.

[35] The Commissioner provided a copy of his report to the chair of the board of the Division and the Minister of Education as required by *PIDA*.

D. The judicial review decision

[36] The respondent applied for judicial review of the Commissioner's investigation and resulting report on grounds of procedural unfairness, bias, and unreasonableness.

[37] With respect to procedural fairness, the respondent argued the Commissioner failed to provide her with adequate disclosure relating to the specifics of the allegations made against her by witnesses, including specifically regarding the identities of the witnesses. She also argued the Commissioner improperly failed to obtain certain privileged documents she said were relevant.

[38] The Commissioner applied for permission to redact the certified record to remove identifying information related to the whistleblower and witnesses. Applying the open court principle and test outlined in *Sherman Estate v Donovan*, 2021 SCC 25, that request was denied: *Campbell v Alberta (Public Interest Commissioner)*, 2024 ABKB 269. The respondent received disclosure of the identifying information as part of the certified record.

[39] The judicial review judge quashed the Commissioner’s report, holding he had breached the duty of procedural fairness: *Campbell v Alberta (Public Interest Commissioner)*, 2024 ABKB 372 [Campbell].

[40] The judicial review judge based his analysis of procedural fairness on the factors set out in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 23-28 [Baker]. He held the nature of the decision was akin to a professional discipline matter, with an investigatory step followed by a hearing. As to the statutory scheme, he noted section 18(2) of *PIDA* states an “investigation is to be conducted as informally as possible” but section 18(3) requires the Commissioner to ensure the “right to procedural fairness and natural justice in an investigation is respected”. He held systemic “gross mismanagement” was a serious allegation in the context of wrongdoings contemplated by *PIDA*. Although the respondent’s employment was not affected, he nevertheless held the report was important to her, as it was disseminated to the board who in turn disseminated it to Division employees. The reputational damage was “inestimable”. On choice of procedure, he stated *PIDA* did not require the Commissioner to withhold the identities of the witnesses. He found the fifth *Baker* factor, the respondent’s legitimate expectations, was not applicable: *Campbell* at paras 25-48.

[41] The judicial review judge concluded the Commissioner failed to provide the respondent with the high degree of procedural fairness the context required. He held, “withholding the names of all of the witnesses was procedurally unfair” and the respondent was “thereby denied the ability to fully respond to the numerous incidents alleged”. He also held the Commissioner should have provided the respondent the “gist” of the allegations he was not considering and should have made efforts to obtain certain potentially privileged records: *Campbell* at paras 49-53.

E. Positions of the parties on appeal

[42] The Commissioner submits the judicial review judge erred in finding breaches of procedural fairness. He contends only a low to moderate level of procedural fairness was owed to the respondent. With respect to the *Baker* factors, he submits: the nature of the report was only investigative, with no binding effect; the statutory scheme creates a confidential avenue for public servants to speak out about wrongdoings, and resulting investigations are not determinative; the reputational effect on the respondent was limited, as the Commissioner only provided the report to the Minister of Education and the chair of the Division; there could be no legitimate expectation that identities would be disclosed as *PIDA* specifies that the Commissioner decides what information to disclose; and the Commissioner is the master of his own process and his procedural choices should be respected.

[43] The Commissioner submits the duty of procedural fairness in this case required him to provide the respondent with enough information to know the case against her. He argues this was done. His decision to withhold identities was a choice he was entitled to make under section 29 of *PIDA*, and it is owed deference.

[44] The respondent replies that the judicial review judge correctly concluded she was owed a high degree of procedural fairness. With respect to the *Baker* factors, she submits: the report was not merely investigative, it was a decision and a finding of wrongdoing; under the statutory scheme, there is no ability to appeal the finding of wrongdoing; and the potential impact on the respondent's reputation was significant.

F. Analysis

[45] The common law duty of procedural fairness is triggered where a public authority makes “an administrative decision which is not of a legislative nature and which affects the rights, privileges or interests of an individual”: *Cardinal v Director of Kent Institution*, [1985] 2 SCR 643 at 653, 1985 CanLII 23 (SCC) [*Cardinal*]; *Baker* at para 20; *Métis Nation of Alberta Association v Alberta (Indigenous Relations)*, 2024 ABCA 40 at para 35. The Commissioner concedes this appeal involves an administrative decision of that kind, such that the duty of procedural fairness is engaged.

[46] 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.

[47] The content of the duty of procedural fairness is eminently variable, inherently flexible, and context specific. All of the circumstances must be considered: *Vavilov* at para 77 [*Vavilov*]; *Baker* at para 21; *Knight v Indian Head School Division No 19*, [1990] 1 SCR 653 at 682-683, 1990 CanLII 138 (SCC) [*Knight*]; *Cardinal* at 654; *Old St Boniface Residents Assn Inc v Winnipeg (City)*, [1990] 3 SCR 1170, 1990 CanLII 31 (SCC) per Sopinka J. Certain protections required in one context to ensure procedural fairness may not be required in another: *R v Nahanee*, 2022 SCC 37 at para 53. Comparisons to other administrative regimes are of limited value; “just because one statutory body's procedure is procedurally fair, does not mean that a different procedure cannot also be procedurally fair”: *Kuny v College of Registered Nurses of Manitoba*, 2017 MBCA 111 at para 48 [*Kuny*].

[48] The specific legislative and administrative context is crucial to determining the content of the duty of procedural fairness: *Canada (Attorney General) v Mavi*, 2011 SCC 30 at para 41 [*Mavi*]. The Supreme Court has identified five non-exhaustive factors that help inform the content of the duty of procedural fairness in a given case: (1) the nature of the statutory scheme; (2) the nature of the decision being made and the process followed in making it; (3) the importance of the decision to the individual or individuals affected; (4) the legitimate expectations of the person challenging the decision; and (5) the choices of procedure made by the administrative decision maker itself: *Baker* at paras 23-28; *Vavilov* at para 77.

[49] After considering each of these factors, we conclude the respondent received the degree of procedural fairness to which she was entitled in the circumstances.

The nature of the statutory scheme

[50] The content of the duty of procedural fairness cannot be properly calibrated without understanding the nature of the statutory scheme including the terms pursuant to which the administrative decision-maker operates. Reviewing courts consider the role of the impugned decision “within the statutory scheme and other surrounding indications in the statute”: *Baker* at para 24. In other words, courts are required to consider “the broader statutory context within which” the decision was made: *Afolabi v Law Society of Ontario*, 2025 ONCA 257 at para 73.

[51] The purposes of the *Public Interest Disclosure (Whistleblower Protection) Act* are articulated in section 2(2):

(a) to facilitate the disclosure and investigation of significant and serious matters in or relating to departments, public entities, offices or prescribed service providers, that an employee believes may be unlawful, dangerous to the public or injurious to the public interest,

(b) to protect employees who make those disclosures,

(c) to manage, investigate and make recommendations respecting disclosures of wrongdoings and reprisals,

(c.1) to provide for the determination of appropriate remedies concerning reprisals,

(d) to promote public confidence in the administration of or services provided by departments, public entities, offices and prescribed service providers...

[52] *PIDA* applies in respect of defined “wrongdoings” in or relating to government departments, public entities, offices or prescribed service providers (referred to below, for simplicity, as public entities), including “gross mismanagement”, which includes “an act or omission that is deliberate and that shows a reckless or wilful disregard for the proper management of... (i) public funds or a public asset, (ii) the delivery of a public service... or (iii) employees, by a pattern of behaviour or conduct of a systemic nature that indicates a problem in the culture of the organization relating to bullying, harassment or intimidation”: *PIDA*, s 3(1)(c). Other types of “wrongdoing” include contravening a statute and creating a substantial and specific danger to life, health, safety or the environment: *PIDA*, ss 3(1)(a), 3(1)(b).

[53] If an employee reasonably believes they have “information that could show that a wrongdoing has been committed or is about to be committed”, they may make a disclosure in writing to a designated officer or to the Commissioner: *PIDA*, ss 9, 13. The Commissioner is

“responsible for investigating disclosures” he receives: *PIDA*, s 18(1). He need not pursue an investigation where, in his opinion, certain criteria are met or there is a valid reason not to do so: *PIDA*, s 19.

[54] The purposes of an investigation are to bring the wrongdoing to the attention of the relevant public entity, to recommend corrective measures, and to promote public confidence: *PIDA*, s 16. Investigations are “to be conducted as informally as possible”, but the “Commissioner must ensure that the right to procedural fairness and natural justice in an investigation is respected, including in respect of individuals making disclosures, individuals alleged to have committed a wrongdoing and witnesses”: *PIDA*, ss 18(2), 18(3).

[55] On completing an investigation, the Commissioner “must prepare a report” setting out his “findings and reasons for those findings” and “any recommendations the Commissioner considers appropriate”: *PIDA*, s 22(1). He must provide a copy of the report to specified officials of the public entity: *PIDA*, s 22(3). If the subject matter of an investigation involves the chief officer of a public entity, the Commissioner must provide a copy of the report to the responsible minister and to the board of directors of the entity: *PIDA*, s 23(1)(c). If the Commissioner believes the entity has not appropriately followed up on his recommendations, he may make a further report on the matter: *PIDA*, s 22(5)(b).

[56] *PIDA* protects employees who make disclosures or participate in investigations, in part, by prohibiting, and specifying a process for investigating, reprisals. It provides, “No person shall take or direct, or counsel or direct a person to take or direct” a reprisal measure such as a dismissal, layoff, suspension, or any measure that would adversely affect their employment “for the reason that the employee took an action” under *PIDA*, including making a disclosure or cooperating in an investigation: *PIDA*, ss 24(1), 24(2). Chief officers of public entities, as defined in section 1(a.1), must establish and maintain procedures “for protecting the identity of individuals involved in the disclosure process, including the employee making the disclosure, individuals alleged to have committed the wrongdoings and witnesses, subject to... the principles of procedural fairness and natural justice”: *PIDA*, s 5(2)(h).

[57] The Commissioner may use and disclose personal information that is “considered necessary to manage and investigate disclosures”, and “may disclose information, including personal information, if in the Commissioner’s opinion the public interest in making the disclosure clearly outweighs the potential harm”, but is not authorized to “publicly identify an employee who... made a disclosure” in an “annual report”: *PIDA*, s 29.

[58] In brief, *PIDA* enables “whistleblower” disclosure by establishing a scheme with some unique features.

[59] Its focus is on “wrongdoing”, or “significant and serious matters”, above wrongdoers. The Commissioner must investigate disclosures of wrongdoing unless he feels certain criteria are met or there is a valid reason not to investigate. He must make findings and may, at his discretion,

make recommendations to other public officials, but he is not empowered to enact or to enforce those recommendations. Investigations must be procedurally fair to whistleblowers and witnesses, as well as to those alleged to have committed wrongdoing.

[60] Importantly, a central purpose of *PIDA* is “to protect employees who make... disclosures”. *PIDA* protects whistleblowers and witnesses by prohibiting reprisals against them, ensuring procedures are in place for protecting their identities, and by presuming their personal information will not be disclosed, unless the Commissioner decides the public interest in disclosure clearly outweighs the potential harm.

[61] In considering the nature of the statutory scheme, the judicial review judge omitted much of this context.

[62] He acknowledged that investigations under *PIDA* are to be informal and conducted relatively quickly. However, he emphasized that section 18(3) required that the “right to procedural fairness” be respected. He concluded “that an investigation under the Act is not intended to be as expansive as, for instance, a public inquiry”. He was not persuaded the “implications here” were “less serious than they might be in a judicial proceeding”. He applied the Supreme Court’s instruction that the finality of the decision and the absence of an appeal procedure will tend to suggest a need for greater procedural protections: *Baker* at para 24. He found that, arguably, both factors applied here: *Campbell* at paras 29-37.

[63] It is true there is no statutory avenue of appeal from a Commissioner’s report. However, as will be elaborated upon in subsequent sections, the judicial review judge’s conclusions otherwise reveal a misunderstanding of the nature of the decision under review. Importantly, recommendations made by the Commissioner are not binding, and in this case no recommendations were made.

[64] Isolating select features of the statutory scheme while ignoring others led the judicial review judge to misapprehend the role of the impugned decision within the statutory scheme. In particular, he discounted the importance *PIDA* places on cultivating confidence in public entities, facilitating disclosure of and investigation into alleged wrongdoing, and protecting employees who make those disclosures and who are involved in those investigations. These important features of the statutory context tend to support a procedure that maintains whistleblower and witness confidentiality to the extent that can be done while ensuring those alleged to have committed wrongdoings are afforded a meaningful opportunity to respond.

The nature of the decision and the process followed in making it

[65] Also important in determining the content of the duty of procedural fairness is the nature of the decision and the process followed in making it. “The more the process provided for, the function of the tribunal, the nature of the decision-making body, and the determinations that must

be made to reach a decision resemble judicial decision making, the more likely it is that procedural protections closer to the trial model will be required by the duty of fairness”: *Baker* at para 23.

[66] In considering this factor, the judicial review judge found the impugned decision was “akin to one involving professional discipline”. He found the Commissioner’s decision effectively “disposed of this matter” without the possibility of a statutory appeal: *Campbell* at paras 26-28. The judicial review judge did not comment on “the process provided for, the function of the tribunal [or] the nature of the decision-making body”.

[67] Here, the decision is the Commissioner’s report. As noted, a report must set out findings and may contain recommendations: *PIDA*, ss 22(1). In this case, no recommendations were made. When the Commissioner does make recommendations, those recommendations are not binding or enforceable. *PIDA* contemplates that a public entity in respect of which recommendations have been made may choose not to take corrective measures: *PIDA*, ss 32(2)(c)(ii), 33(1)(d.1)(ii). If the Commissioner believes a public entity has not appropriately followed up on his recommendations, his recourse is to issue a further report: *PIDA*, ss 22(5), 23(3). Just as the Commissioner has no power to compel a public entity to take corrective measures, he also has no power to impose sanctions on those who contribute to a wrongdoing. In this sense, a Commissioner’s report does not resemble a judicial decision. Nor is it akin to a decision involving professional discipline.

[68] As described above, *PIDA* expressly contemplates investigations “be conducted as informally as possible” while ensuring the right to procedural fairness is respected: *PIDA*, ss 18(2), 18(3). It emphasizes the protection of whistleblowers and employees against reprisal. It anticipates that the personal information and identities of whistleblowers and witnesses will not be disclosed, unless the Commissioner decides the potential harm from disclosure is clearly outweighed by the public interest: *PIDA*, s 29(3). It does not anticipate steps such as document production, cross-examination, *viva voce* evidence, or an oral hearing.

[69] The “process provided for, the function of the tribunal [and] the nature of the decision-making body” do not resemble judicial decision making, all of which suggests a court-like procedure is not required to achieve the appropriate level of procedural fairness.

The importance of the decision to those affected

[70] The third factor in determining the content of the duty of procedural fairness is “the importance of the decision to the individual or individuals affected. The more important the decision is to the lives of those affected and the greater its impact on that person or those persons, the more stringent the procedural protections that will be mandated”: *Baker* at para 25.

[71] The chambers judge acknowledged that “technically” the respondent’s employment was not affected, but found the reputational damage was “inestimable”. He said the Commissioner’s finding would foreclose the possibility of post-career consulting “if [the respondent] had any expectations in that respect”. He noted the report was not a public document and he did not suggest

the Commissioner was responsible for its dissemination within the Division. Nonetheless, he found it “reasonable to assume that a Decision respecting gross mismanagement by a manager will have serious consequences whether widely disseminated or not”: *Campbell* at paras 38-41.

[72] We are not aware of any basis for thinking the respondent had post-career consulting aspirations. It is not clear why, if the report had been seen only by the statutorily designated recipients, and only after her retirement, it would have caused serious consequences for the respondent or to her reputation.

[73] A finding of wrongdoing would, of course, be felt by a person who had devoted decades to a profession. On the facts in this case, however, that finding did not have a more concrete consequence, as it might have had in a professional discipline context. Under *PIDA* alone, there can be no concrete consequence; the Commissioner may only convey his findings and recommendations to specified officials within the government and relevant public entity. It is possible that any consequences subsequently imposed by other government actors could constitute decisions attracting judicial review or review in other forums.

[74] As noted, a unique feature of *PIDA* is that it targets wrongdoing above wrongdoers. The legislative scheme facilitates the provision of information and recommendations to those responsible for administering public entities, in part for the purpose of enhancing confidence in those entities. *PIDA* does contemplate that “an employee who commits a wrongdoing is subject to appropriate disciplinary action, including termination of employment” (*PIDA*, s 53.1(a)), but the Commissioner has no power to impose disciplinary action and, in any event, the content of the duty of procedural fairness “is to be decided in the specific context of each case” (*Baker* at para 21, citing *Knight* at 682). Disciplinary action was not a real risk for the respondent, as she had provided notice of her intention to retire before the first investigation summary was issued, and the Commissioner did not release his report until after her retirement.

[75] We do not suggest the Commissioner’s investigation and report had no impact on the respondent. However, we conclude it did not have an “immediate and profound impact” on her life: *Baker* at para 25, citing *R v Higher Education Funding Council, ex parte Institute of Dental Surgery*, [1994] 1 All ER 651 (QB) at 667.

The legitimate expectations of the person challenging the decision

[76] The legitimate expectations of the person challenging the decision may also determine what procedures the duty of fairness requires in given circumstances: *Baker* at para 26. If a decision maker has made representations about the procedure it will follow in making a particular decision, or if it has consistently adhered to certain procedural practices in the past in making such a decision, the scope of the duty of procedural fairness owed to the affected person will be broader than it otherwise would have been. The practice or conduct said to give rise to the reasonable expectation must be “clear, unambiguous and unqualified”: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras 94-96; see also *Mavi* at para 68.

[77] Counsel for the respondent conceded, “this factor doesn’t really apply”, and the judicial review judge found it had no application: *Campbell* at para 25. We agree. The respondent has not identified any “clear, unambiguous and unqualified” practice or conduct on the part of the Commissioner related to the issue of disclosure. The first investigation summary provided by the Commissioner’s office was clear that identifying information was being “genericized to protect the identity of the complainant and interviewees”, and the Commissioner remained consistent throughout that witnesses’ identities would be protected.

The choices of procedure made by the administrative decision maker

[78] In large part, the foregoing analysis has focused on the legislator’s choices in enacting the administrative regime. The final *Baker* factor shifts that focus to the decision-maker’s choices. While obviously not determinative on judicial review, courts should give “important weight” to the decision-maker’s choice of procedures and institutional constraints, particularly when the legislator has given the decision-maker “the ability to choose its own procedures” or when the decision-maker has “expertise in determining what procedures are appropriate in the circumstances”: *Baker* at para 27.

[79] *PIDA* leaves certain procedural decisions to the Commissioner. It is his responsibility to ensure “the right to procedural fairness and natural justice in an investigation is respected, including in respect of individuals making disclosures, individuals alleged to have committed a wrongdoing and witnesses”: *PIDA*, s 18(3). *PIDA* enables the Commissioner to obtain evidence, but provides little direction on when, how, or to what extent he must do so: *PIDA*, s 18.1. The Commissioner must report on his “findings and reasons for those findings”, but he is not obligated to make recommendations; he need only do so if he considers it appropriate: *PIDA*, s 22(1). Importantly for this appeal, “the Commissioner may disclose information, including personal information, if in the Commissioner’s opinion the public interest in making the disclosure clearly outweighs the potential harm”: *PIDA*, s 29(3).

[80] Here, the Commissioner explained his decision not to disclose the names of the whistleblower and witnesses: “Witness and whistleblower confidentiality is a foundational pillar of the whistleblowing regime under the Act”. He acknowledged the need to balance that confidentiality with procedural fairness and said he had balanced those aims by providing “as much detail as possible respecting specific incidents as could be provided without compromising the identity of individuals who cooperated with [his] office”. Where the respondent could not meaningfully respond to an allegation without knowing the witness’ identity, the Commissioner did not consider the allegation or related evidence.

[81] The judicial review judge failed to contextualize the Commissioner’s choices regarding disclosure within the *PIDA* scheme. He emphasized that *PIDA* does not prohibit the release of the names of whistleblowers or witnesses: *Campbell* at para 44. While it is true that *PIDA* does not prohibit the Commissioner from identifying whistleblowers and witnesses in a report, that observation does not establish a presumption in favour of identification. To the extent *PIDA* sets

a baseline or a norm, it is non-identification. As noted, a stated purpose of *PIDA* is to “protect employees who make... disclosures”: *PIDA*, s 2(2)(b). *PIDA* mandates procedures “for protecting the identity of individuals involved in the disclosure process”, including witnesses: *PIDA*, s 5(2)(h). It allows for disclosure of personal information where, in the Commissioner’s opinion, the public interest in doing so clearly outweighs the potential harm: *PIDA*, s 29(3).

[82] In our view, the choices made by the Commissioner regarding the nature and extent of disclosure are owed “important weight”. The Commissioner was expressly given the authority to assess when disclosure of personal information is warranted. He has expertise with balancing the interests engaged in the whistleblower context, including procedural fairness, protecting witnesses and whistleblowers, and facilitating the disclosure of wrongdoings, which includes avoiding the potential chilling effect associated with permitting witnesses and whistleblowers to be too readily identified.

Non-disclosure of identities

[83] In light of the foregoing factors and following additional considerations, we reject the contention that the Commissioner breached the duty of procedural fairness by refusing to disclose whistleblower and witness identities.

[84] The *audi alteram partem* rule is a fundamental aspect of procedural fairness. It requires that parties know the case to be made against them and be given the opportunity to respond: *Malton v Attia*, 2016 ABCA 130 at paras 36-38; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 56; *Nitschmann v Nitschmann*, 2025 ABCA 95 at para 10.

[85] The scope and extent of the *audi alteram partem* rule can vary with the specific context of each case: *Moreau-Bérubé v New Brunswick (Judicial Council)*, 2002 SCC 11 at para 75 [*Moreau-Bérubé*]. The statutory context in which the decision-maker operates, including any duty or discretion to maintain confidentiality, is relevant to assessing the sufficiency of the information disclosed: *Deloitte & Touche LLP v Ontario (Securities Commission)*, 2003 SCC 61 at paras 28-30. In some contexts, it may not be necessary to disclose all the details of the allegations, so long as the affected party “was actually made aware of the substance of the allegations to be able to respond in a meaningful way”: *Kuny* at para 49; *Seaspan Ferries Corporation v British Columbia Ferry Services Inc*, 2013 BCCA 55 at paras 82-83.

[86] In their arguments regarding the sufficiency of disclosure, the parties rely primarily on three cases arising from administrative schemes that allow for protection of witnesses’ identities: *Marchand v Public Sector Integrity Commissioner*, 2014 FC 329 [*Marchand*], *Chapman v Canada (Attorney General)*, 2019 FC 975 [*Chapman*], and *Michael Di Biase v City of Vaughan*, 2016 ONSC 5620 [*Di Biase*].

[87] *Marchand* concerned, in part, the protection of witnesses’ identities under the federal *Public Servants Disclosure Protection Act*, SC 2005, c 46, a statute with many similarities to *PIDA*.

A Federal Court judge upheld an order directing disclosure of documents, including a witness list, to Mr. Marchand who had been found to have committed several serious wrongdoings.

[88] The circumstances in *Marchand* were different than in the present case. In *Marchand*, the commissioner's decision had "serious consequences for the applicant", including on his career (paras 43, 48); there was a "significant issue" about whether bias "permeated and compromised the integrity of the investigation" (paras 15, 33-38); the investigation "provided the applicant with a minimum of transparency" (para 58); and the investigator's report was "filled with issues of credibility" (para 62). Moreover, the judge treated the disclosure issue as "not so much [about] the content of the duty of fairness" as meeting the requirements of the *audi alteram partem* rule (para 75). It is not apparent how the judge determined the requirements of *audi alteram partem* independently of the content of procedural fairness. As noted, the former is a component of the latter.

[89] In *Chapman*, an allegation of wrongdoing was made under the same federal legislation as in *Marchand*. The entire disclosure provided to Ms. Chapman was "Gross Mismanagement (disciplinary actions)". On review, the judge "[did] not understand, and Canada has not explained, why it would not have been possible to provide any information regarding the allegations against Ms. Chapman while still protecting the identity of the discloser and other witnesses": *Chapman* at para 43 [emphasis in original]. He found the duty of procedural fairness had been breached in the circumstances.

[90] In *Di Biase*, a municipal Integrity Commissioner received a complaint alleging Mr. Di Biase, a city councillor, had committed ethical violations. Mr. Di Biase alleged the ensuing investigation was unfair. He sought additional information, including the identities of the witnesses interviewed by the Integrity Commissioner.

[91] The court distinguished *Marchand*. Unlike in *Marchand*, witnesses had reported feeling intimidated when raising their concerns directly with Mr. Di Biase and expressed their wish to have their identities protected: *Di Biase* at para 144. The court further noted that Mr. Di Biase's defence was a blanket denial of the allegations; his position did not turn on the witnesses' identities in the way Mr. Marchand's position had: *Di Biase* at para 145.

[92] Among other things, the court considered that the governing legislation required the Integrity Commissioner to maintain secrecy over investigations and bestowed "significant autonomy" in deciding what to disclose in a report: *Di Biase* at paras 119-121. After considering the *Baker* factors in context, the court found the investigator had properly balanced protection of witnesses' identities with Mr. Di Biase's right to respond meaningfully to the allegations: *Di Biase* at paras 138, 148. It held the Integrity Commissioner was not required to provide the applicant with every detail of the case against him and was not required to name the witnesses. It was sufficient that the broad grounds of the allegations had been provided: *Di Biase* at para 149.

[93] *Lycka v Alberta (Information and Privacy Commissioner)*, 2009 ABQB 245 [Lycka] is another case where disclosure was required in different circumstances. It dealt with complaints under the *Personal Information Protection Act*, SA 2003, c P-6.5. It found disclosure of identities was required to enable the applicant to make his case. The facts of *Lycka* were significantly different than the facts in the present case. Two complainants alleged Dr. Lycka had improperly used patient contact information to promote his charitable foundation. He said some of his patients had consented to receiving such material. If he had known the complainants' identities, he could have determined whether they had provided consent. Therefore, knowledge of their identities was truly necessary for Dr. Lycka to respond to the allegations.

[94] In this case, throughout the investigative process and in the court below, the respondent objected to the protection of witnesses' identities, claiming her ability to test credibility and to respond to specific allegations was undermined. She asserted the allegations had been coordinated by employees who were unhappy with the changes she had implemented at the board's direction. However, having now been provided with the whistleblower and witness identities through the certified record of proceedings, the respondent has not identified how her submissions before the Commissioner would have been meaningfully different.

[95] She critiques investigative choices in the abstract and points to relatively minor flaws in the evidence she says would have undermined witnesses' credibility. For example, the whistleblower said the respondent had been "fired" from a previous job when in fact she resigned; one witness referred to "the College" offering severance pay when there was no "College" involved; another witness claimed to be a member of the "senior leadership team" when in fact she was only part of the "broader leadership team". Furthering her theme of collusion, she noted "striking similarities between statements on particular issues".

[96] The respondent was presented with two reports summarizing and aggregating the interview evidence. The summaries recounted sentiments expressed by multiple witnesses and evidence regarding specific events. We are satisfied the investigation summaries adequately set out the case the respondent had to meet. The themes of the allegations were clearly articulated, as was the breadth and consistency of the supporting evidence.

[97] The respondent was able to provide a paragraph-by-paragraph response, in most cases detailing why, in her view, the allegations were "factually incorrect". We are satisfied the respondent knew the case against her and was able to respond.

[98] Had she known the witnesses' identities, it may have been easier for the respondent to point to narrow inconsistencies and to argue against witnesses' credibility to some degree. It may have been easier to explore collusion and improper motives, though the cogency of the latter theories is undermined by the fact that the witnesses were asked general questions about the workplace and the respondent was not identified as the target of the investigation. Further, bearing on both credibility and collusion, we note the Commissioner's finding that even the evidence given by the respondent's suggested witnesses largely supported the allegations of wrongdoing. On the whole,

it is not apparent that the respondent's position was meaningfully impaired. It may be true that knowing identities would have enhanced her ability to respond, but administrative procedures need not be optimal to be fair.

[99] Having regard to the *Baker* factors and the other foregoing considerations, we are satisfied the “genericized” disclosure achieved fairness in a way that was “appropriate to the decision being made and its statutory, institutional, and social context”: *Baker* at para 22.

Other alleged breaches of procedural fairness

[100] We also reject the respondent's other allegations of breach of procedural fairness.

[101] The respondent argues the Commissioner was required, as part of the duty of procedural fairness, to obtain and disclose records from the Division that were protected by solicitor-client privilege. She asserts her actions in relation to certain employment matters were informed by legal advice received by the Division.

[102] Clear, explicit and unequivocal statutory language is required to permit a statutory official to pierce solicitor-client privilege: *Canada (Privacy Commissioner) v Blood Tribe Department of Health*, 2008 SCC 44 at paras 2, 10-11; *Alberta (Information and Privacy Commissioner) v University of Calgary*, 2016 SCC 53 at paras 2, 71. No such statutory language is found in *PIDA*. To the contrary, *PIDA* expressly states it does not authorize “the disclosure of... information or documents that are protected by solicitor-client privilege or litigation privilege”: *PIDA*, s 28.1(1)(b). The duty of procedural fairness did not require the Commissioner to obtain and disclose the Division's privileged records.

[103] The respondent argues the Commissioner was obligated to provide her with the gist of evidence on which he did not rely. In his report, the Commissioner noted that some evidence obtained during the investigation “related to allegations which Ms. Campbell could not meaningfully respond to without disclosing the identity of the witnesses”; therefore, the Commissioner wrote, he did not consider that evidence. The respondent submits the failure to disclose at least the gist of the excluded evidence was a breach of fairness. The only authority cited for this position is *Earhart v Canada (Attorney General)*, 2019 ONCA 980 at para 59 [*Earhart*]. In *Earhart* the obligation to provide the “gist” of evidence was sourced in a context-specific administrative “Directive” regarding disclosure, and the disclosure issue pertained to information that was relied on in the administrative proceedings. *Earhart* does not assist the respondent.

[104] The respondent further asserts she was given too little time to respond to the allegations made against her. The main investigation summary was provided to the respondent on November 17, 2021. She requested an extension of time and was given ample time – until April 1, 2022 – to respond. While the Commissioner provided the respondent only an additional five days to respond to the supplemental investigation summary delivered in May 2022, we are unable to find that was a breach of the duty of procedural fairness. The Commissioner was required to conduct his

investigation on a “timely and expeditious” basis, with an investigation generally to “be concluded not more than 120 business days from the date on which the disclosure of wrongdoing is received”: *PIDA*, s 18(2); *Public Interest Disclosure (Whistleblower Protection) Regulation*, Alta Reg 71/2013, ss 3(7)(c), 5. The supplemental summary was relatively brief, and the respondent provided a paragraph-by-paragraph response.

[105] The respondent further argues she should have been afforded “an oral hearing, or even an interview”. Considering the *Baker* factors outlined above, we are satisfied the duty of procedural fairness did not require an oral hearing or interview in the circumstances, and that the opportunity to provide written submissions was sufficient. The Commissioner was required to conduct his investigation “as informally as possible”: *PIDA*, s 18(2). The respondent argues fairness demanded she be interviewed, in part so her credibility could be assessed. The Commissioner’s credibility assessments were based primarily on content and corroboration. He accepted the respondent’s perception of events, as conveyed in her written responses, as sincere. There is no reason to believe information would have been uncovered beyond that provided in her many of pages of written response. We are not satisfied an oral hearing or interview was required.

[106] The respondent also argues it was improper for the Commissioner to rely on his investigator’s summaries to assess witnesses’ credibility without ever “interviewing any of them” himself. The unspoken premise of this argument is that credibility must be determined through a court-like procedure. As previously outlined, such procedures are not required in this context. The Commissioner is empowered to “engage the services of any persons necessary to assist [him] in carrying out [his] duties and functions” and to “delegate to any person employed or engaged by [him]... any duty, power or function of the Commissioner”: *PIDA*, ss 44(2), 45.1(1). It was within the Commissioner’s power to rely on his investigator’s summaries, including his investigator’s assessment of demeanour, when assessing credibility.

[107] The respondent further argues the investigation breached the duty of impartiality. She repeats her claims about other breaches of procedural fairness. She argues, in light of the alleged breaches, the reasonable observer would conclude the Commissioner was incapable of coming to a fair conclusion. However, as outlined above, the alleged breaches of procedural fairness were not breaches. Even if they were, they would not collectively give rise to a reasonable apprehension of bias.

[108] The judicial review judge declined to rule on bias. However, he found “it curious that the language of the complaint that initiated the investigation tracked exactly the language of the statute”. He asserted the Commissioner “should have been very skeptical” given the language used by the whistleblower: *Campbell* at paras 55-58. It is apparent from the “Disclosure of Wrongdoing Form” included in the extracts of key evidence that the original disclosure was submitted using an electronic form. One of the questions on the form was, “Which of the below categories does the Wrongdoing apply?” with the statutory wording reproduced below for selection. Regardless of how the whistleblower came to use the statutory wording, we decline to draw a negative inference

from it. In particular, it is not capable of sustaining the judicial review judge's conclusion that the Commissioner was too "proactive".

[109] We are satisfied that the respondent received the degree of procedural fairness to which she was entitled in the circumstances.

V. Reasonableness

[110] Having quashed the report on procedural grounds, the judicial review judge declined to rule on the respondent's argument regarding substantive unreasonableness. Having stepped into his shoes, we will comment on this argument briefly.

[111] The respondent submits the Commissioner's decision was substantively unreasonable because it failed to address her arguments that the subject matter of the disclosure could be considered under another piece of legislation, collective agreement or employment agreement, pursuant to sections 19(1) and 19(1.1) of *PIDA*.

[112] Section 19(1) provides, in part, that the Commissioner is not required to investigate a disclosure if he is of the opinion that the disclosure could more appropriately be dealt with according to a different legislative procedure or the procedures under a collective or employment agreement: *PIDA*, ss 19(1)(a), 19(1)(c). Section 19(1.1) provides:

Before beginning an investigation into a disclosure where the disclosure alleges gross mismanagement in relation to employees, the Commissioner must be satisfied that all applicable mechanisms, including any human resource processes or processes under a collective agreement, to address bullying, harassment or intimidation within the department, public entity, office or prescribed service provider have been used or considered.

[113] The respondent has not identified a provision of any collective agreement, employment agreement or legislation, or any human resources process, that would be "applicable" or would allow the disclosure to be "more appropriately... dealt with". Therefore, her argument boils down to an assertion that the Commissioner failed to indicate he had turned his mind to the potential for other procedures prior to referring the matter for investigation.

[114] However, the Commissioner wrote in his report:

Before the investigation began, the prior Commissioner satisfied herself that all other applicable mechanisms to address bullying, harassment, or intimidation within the Division had been considered as required by section 19(1.1) of the Act. Given Ms. Campbell's significant position within the Division, the number of concerns, and the apparent systemic scope of the alleged misconduct, alternate

mechanisms to address Ms. Campbell's conduct were insufficient, and it was open to this office to begin its investigation into the disclosure of wrongdoing.

[115] We are not persuaded more was required. The Commissioner's reasons on this point were transparent, intelligible and justified: *Vavilov* at paras 15, 95-98. There is no basis for us to interfere.

VI. Conclusion

[116] The appeal is allowed. The report of the Commissioner stands.

Appeal heard on December 4, 2025

Memorandum filed at Edmonton, Alberta
this 1st day of June, 2026

Antonio J.A.

de Wit J.A.

Hawkes J.A.

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