IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Meneray v. British Columbia Society for the Prevention of Cruelty to Animals*, 2023 BCSC 442

Date: 20230323
Docket: S216993
Registry: Vancouver

Between:

John Meneray

Petitioner

And

British Columbia Society for the Prevention of Cruelty to Animals, Shawn Eccles, Minister of Public Safety and Solicitor General

Respondents

Before: The Honourable Justice Shergill

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

Reasons for Judgment

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Place and Date of Hearing:	Vancouver, B.C. September 1-2, 2022 October 24-25, 2022
Place and Date of Judgment:	Vancouver, B.C. March 23, 2023

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I. Overview

[1] The Petitioner, John Meneray, is a former Animal Protection Officer (“APO”) who was employed with the respondent, British Columbia Society for the Prevention of Cruelty to Animals (“SPCA” or “Employer”). In order to carry out his duties and responsibilities as an APO, the Petitioner was appointed as a Special Provincial Constable (“SPC”) by the respondent Minister of Public Safety and Solicitor General (the "Minister"[1]). The SPC appointment was made pursuant to the *Police Act*, R.S.B.C. 1996, c. 367 [*Police Act*].

[2] The Petitioner’s employment was terminated for cause by the SPCA in January 2021, some months following the closure of his SPC appointment by the Minister. The closure occurred after the Minister was notified that the Employer had commenced an investigation into allegations of misconduct stemming from an off-duty incident involving Mr. Meneray (the “Incident”). The respondent Shawn Eccles was a Senior Manager, Cruelty Investigations, for the SPCA and was directly involved in the investigation and eventual dismissal of the Petitioner by the SPCA.[2]

[3] The Petitioner seeks various orders and declarations in relation to the conduct of the SPCA Respondents and the Minister the effects of which would render his dismissal a nullity and return him to his former position of employment.

[4] There are two aspects to this judicial review: the first is with respect to the actions of the SPCA Respondents, and the second challenges the actions of the Minister.

[5] On the first aspect, the substantive reasonableness of the SPCA Respondents’ decision to dismiss the Petitioner is not in issue. Nor is the question of whether the Petitioner's conduct amounted to a disciplinary default, or just cause for dismissal. Rather, the dismissal is challenged on jurisdictional grounds only. Specifically, the Petitioner takes issue with the procedures and steps that were followed by the SCPA Respondents after the Incident. He argues that any

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[1] Reference to the Minister means the Minister or his delegate.
[2] Mr. Eccles and the SPCA are referred to collectively as “SPCA Respondents”.

disciplinary action against him should have proceeded under the *Police Act* and the *Special Provincial Constable Complaint Procedure Regulation*, B.C. Reg. 206/98 [*SPC Regulation*].

[6] The SPCA Respondents say that the Employer's decision that the *SPC Regulation* and *Police Act* did not apply is not subject to judicial review, as it is a private matter governed by the law of contracts. Alternatively, if the decision is reviewable, it is argued that the Employer acted reasonably when it determined that those enactments did not apply to Mr. Meneray's circumstances.

[7] On the second aspect of the judicial review, the Petitioner challenges the reasonableness and validity of the closure of his SPC status. He alleges that the Minister or his delegate unilaterally revoked his SPC appointment for improper reasons, and that the decision to revoke his SPC appointment is subject to judicial review. The Minister argues that the SPC appointment was closed by automatic operation of the law, and denies issuing a decision to "revoke" or otherwise exercise his discretion with respect to Mr. Meneray's SPC appointment. Consequently, it is submitted that judicial review under the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 [*JRPA*] is not available.

II. Legal Framework

[8] The *JRPA* sets out the procedural requirements and statutory limits of judicial review.

[9] The relevant provisions are excerpted below:

> Definitions
>
> 1. In this Act:
>
> …
>
> "decision" includes a determination or order;
>
> "licence" includes a permit, certificate, approval, order, registration or similar form of permission required by law;
>
> …
>
> "statutory power" means a power or right conferred by an enactment
>
> (a) to make a regulation, rule, bylaw or order,

(b) to exercise a statutory power of decision,

(c) to require a person to do or to refrain from doing an act or thing that, but for that requirement, the person would not be required by law to do or to refrain from doing,

(d) to do an act or thing that would, but for that power or right, be a breach of a legal right of any person, or

(e) to make an investigation or inquiry into a person's legal right, power, privilege, immunity, duty or liability;

"statutory power of decision" means a power or right conferred by an enactment to make a decision deciding or prescribing

(a) the legal rights, powers, privileges, immunities, duties or liabilities of a person, or

(b) the eligibility of a person to receive, or to continue to receive, a benefit or licence, whether or not the person is legally entitled to it,

and includes the powers of the Provincial Court;

"tribunal" means one or more persons, whether or not incorporated and however described, on whom a statutory power of decision is conferred.

Application for judicial review

2 (1) An application for judicial review must be brought by way of a petition proceeding.

(2) On an application for judicial review, the court may grant any relief that the applicant would be entitled to in any one or more of the proceedings for:

(a) relief in the nature of mandamus, prohibition or certiorari;

(b) a declaration or injunction, or both, in relation to the exercise, refusal to exercise, or proposed or purported exercise, of a statutory power.

Error of Law

3 The court's power to set aside a decision because of error of law on the face of the record on an application for relief in the nature of certiorari is extended so that it applies to an application for judicial review in relation to a decision made in the exercise of a statutory power of decision to the extent it is not limited or precluded by the enactment conferring the power of decision

…

Powers to direct tribunal to reconsider

> 5 (1) On an application for judicial review in relation to the exercise, refusal to exercise, or purported exercise of a statutory power of decision, the court may direct the tribunal whose act or omission is the subject matter of the application to reconsider and determine, either generally or in respect of a specified matter, the whole or any part of a matter to which the application relates.
>
> (2) In giving a direction under subsection (1), the court must
>
> (a) advise the tribunal of its reasons, and
>
> (b) give it any directions that the court thinks appropriate for the reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration.

[10] Judicial review is meant to be an "expeditious remedy to correct errors made by public bodies in carrying out their public functions": *Strauss v. North Fraser Pretrial Centre (Deputy Warden of Operations),* 2019 BCCA 207 at para. 5 [*Strauss BCCA*].

[11] The function of judicial review is "to ensure the legality, the reasonableness and the fairness of the administrative process and its outcomes": *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 28. It is not to substitute the court's decision for that of the decision maker: *Harrison v. British Columbia (Information and Privacy Commissioner)*, 2009 BCCA 203 at para. 68, leave to appeal to SCC ref'd 33250 (14 January 2010).

[12] The court's role in a judicial review proceeding is supervisory. The court is empowered to ensure that the decision maker acted within the authority bestowed upon it by the legislature: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 24 [*Vavilov*]; *Dunsmuir* at para. 28; and *Lang v. British Columbia (Superintendent of Motor Vehicles),* 2005 BCCA 244 at paras. 22 and 24.

[13] The manner in which a judicial review proceeding is to be conducted was succinctly summarized in *Budlakoti v. Canada (Minister of Citizenship and Immigration),* 2015 FCA 139 at para. 28, leave to appeal to SCC ref'd 36591 (28 January 2016), as follows:

a) The court must first address any preliminary objections about why the judicial review hearing should not proceed. These objections usually concern discretionary bars to review, such as mootness, delay, or deficient pleadings.

b) Second, the court must consider the application on its merits. This is accomplished by (a) determining whether the decision maker acted within the scope of its statutory authority, and (b) whether the decision maker lost jurisdiction by failing to provide a fair hearing, or rendering a decision that was either incorrect or unreasonable, depending on which standard of review is applicable.

c) Finally, if the court concludes that the tribunal committed an error, the court must determine (a) whether to exercise its discretion to grant a remedy, and if so, (b) what remedy to grant.

[14] The reviewing court is not compelled to grant a remedy in the face of an otherwise meritorious application. Rather, the court retains the discretion to refuse relief even where it is found that the decision maker acted outside the scope of its statutory authority, or lost jurisdiction for failure to provide a fair hearing or by rendering an incorrect or unreasonable decision: *JRPA*, s. 8; *Lowe v. Diebolt*, 2014 BCCA 280 at paras. 38–40.

III. Background Facts

[15] The basic underlying facts in this case are uncontroverted.

[16] The SPCA is a society continued under s. 3 of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372 [*PCAA*]. It is a non-profit animal welfare organization that protects and enhances the quality of life of animals in British Columbia through, among other things, the enforcement of animal cruelty laws under the *PCAA*.

[17] The respondent Minister is the Minister referenced in Part 2 of the *Police Act*. The Minister is generally responsible for policing in the province, and specifically responsible for appointing SPCs pursuant to s. 9 of the *Police Act*.

[18] Mr. Meneray commenced his employment as an APO with the SPCA on November 5, 2013. As part of his employment, he was appointed as an authorized agent of the SPCA pursuant to s. 10 of the *PCAA*.

[19] In order to carry out his duties and responsibilities as an APO, the Petitioner was also required to be appointed as an SPC pursuant to s. 9 of the *Police Act*. That appointment was made for a five-year term starting in March 2014, and renewed in 2019 for another five years.

[20] Pursuant to the terms of his SPC appointment, the Petitioner's powers and duties were restricted to the performance of his duties as an authorized agent of the SPCA. Specifically, to enforce the animal cruelty provisions of the *PCAA*, the *Criminal Code,* R.S.C. 1985, c. C-46 [*Criminal Code*] and any other laws relating to the prevention of cruelty to animals.

[21] At all material times, the Petitioner was a union member represented by the Canadian Union of Public Employees, Local 1622 ("CUPE"). The terms and conditions of his employment were governed by a collective agreement between the SPCA and CUPE (the "Collective Agreement"). Pursuant to Article 18 of the Collective Agreement, matters concerning the suspension, discipline or dismissal of an employee were to be resolved by the Board of Arbitration.

[22] The Collective Agreement contained the following material terms:

> ARTICLE 3 - RIGHTS OF EMPLOYER
>
> Subject to the terms of this Agreement, all matters concerning the operations of the employer shall be reserved to the Management.
>
> All Management rights, functions and prerogatives which have not been restricted by a specific provision of this Agreement are retained and vested exclusively with the Employer, including the right to hire, transfer, and direct employees and to reprimand, suspend, discharge or discipline employees for just cause.

> The question of whether any of these rights is limited by this Agreement shall be decided through the Grievance and Arbitration procedure.
>
> Management rights are to be practiced fairly, equitably and without discrimination.
>
> …
>
> ARTICLE 18 - GRIEVANCE PROCEDURE
>
> a) Grievances
>
> A grievance shall mean any difference between the Employer and the Union concerning the interpretation, application or operation of this Agreement, or any grievance concerning any alleged violation of this Agreement, or any difference concerning the suspension, discipline or dismissal of an employee.
>
> Any difference concerning the interpretation, application or operation of this Agreement or any violation thereof, including any question as to whether any matter is arbitrable shall be dealt with without stoppage of work in the following manner.
>
> …
>
> j) Optional Grievance Investigation Procedure
>
> …
>
> 7. Dismissal and Suspension
>
> An employee who alleges wrongful dismissal or suspension by the Employer shall be entitled to have such grievance settled in accordance with the grievance procedure set forth in Article 18. If the employee is found by a Board of Arbitration appointed under the provisions of Article 18 to be dismissed or suspended for other than proper cause, the Board of Arbitration may:
>
> i. direct the Employer to reinstate the employee and pay to the employee a sum equal to his/her wages lost by reason of his/her dismissal or suspension, or such lesser sum as in the opinion of the Board of Arbitration is fair and reasonable; or
>
> ii. make such order as it considers fair and reasonable having regard to the terms of this Agreement.
>
> An employee who is reinstated by a Board of Arbitration shall be entitled to reinstatement without loss of seniority.

[23] The 2015–2017 Collective Agreement was renewed from 2018–2022 by a Memorandum of Agreement between the SPCA and CUPE.

A. The Incident and Suspension

[24] Around May 6, 2020, while off-duty, Mr. Meneray was involved in an altercation with a cyclist (the Incident). According to Mr. Meneray, the cyclist was riding his bicycle erratically in the roadway and shouting at the Petitioner and

pedestrians, while carrying a small dog under his arm. The cyclist collided with the Petitioner's vehicle. When the Petitioner stopped his vehicle to speak with the cyclist, the cyclist approached and appeared to want to fight. An argument ensued, during which Mr. Meneray punched the cyclist and knocked him out. Some of the Incident was caught on the Petitioner's dashcam video recorder.

[25] Mr. Meneray called 911 to report the Incident to the RCMP. By the time the RCMP arrived, the cyclist had left the scene. The RCMP attended and spoke with the Petitioner. The RCMP eventually located the cyclist and the dog. They determined that there were no animal care concerns regarding the dog, and that the Incident involved a consensual fight between the two men. The RCMP concluded their file without any charges being laid.

[26] Around May 7, 2020, Mr. Meneray posted a screenshot from his dashcam video on his Instagram account, which showed his arm extended and holding the cyclist by the throat (the “Instagram Post”). The Instagram Post could be viewed by the general public, and the Petitioner's Instagram account identified him as an employee of the SPCA. Shortly after or around the same time as the Instagram Post, Mr. Meneray posted a series of images, comments and a video clip of the Incident on his Facebook account (the "Facebook Post"). The Facebook Post also clearly identified him as an SPCA employee.

[27] Mr. Eccles saw the Instagram Post around the same day it was made. He says he was concerned that an APO had been assaulted, that the Instagram Post identified the Petitioner as an SPCA employee, and that the post could damage the SPCA's image and reputation.

[28] On May 8, 2020, Mr. Eccles e-mailed the Instagram post to Kathryn Corcoran, the Regional Manager, Cruelty Investigations for the SPCA. At Mr. Eccles’s request, Ms. Corcoran spoke to Mr. Meneray to discuss the posting. Mr. Meneray told Ms. Corcoran that his intention behind the Instagram Post was to locate the cyclist to obtain the dog. In response to concerns raised by Ms. Corcoran, Mr. Meneray agreed to immediately remove the Instagram Post.

[29] Around May 12, 2020, Mr. Eccles was contacted by a "friend", as well as a former SPCA employee, who were concerned about a Facebook posting which they had seen regarding the Incident. Upon hearing the concerns, Mr. Eccles went on to Facebook and discovered the Facebook Post. Mr. Eccles was concerned that the Facebook Post had been made despite Mr. Meneray being made aware of the Employer's concerns regarding the Instagram Post.

[30] On May 13, 2020, the SPCA initiated an investigation into the alleged Incident (the "Investigation"). Mr. Meneray was suspended with pay pending the conclusion of the investigation, and was relieved of his duties, badge, and identification ("ID").

[31] Mr. Meneray went on medical leave on May 23, 2020. The SPCA put the Investigation on hold until the Petitioner was medically cleared to return to work.

B. The Closure of the SPC Appointment

[32] On June 25, 2020, Mr. Eccles emailed Corinne Alexander who was the Program Manager, Special Provincial Constables, Police Services Division ("PSD"). His email attached a letter in which Mr. Eccles reported Mr. Meneray's suspension pending the Investigation, and provided details of the Incident and Investigation process:

> In accordance with the Memorandum of Understanding between the BC SPCA and the Ministry of the Attorney General signed May 1, 1995, I am writing to inform you of an incident involving an SPC John Robert Meneray (Badge #617) which may affect his suitability to continue to hold SPC authority.
>
> This incident is believed to have occurred sometime between May 5 and May 7, 2020 in White Rock BC, and initially came to my attention in the evening on May 7, 2020. I discussed it with the SPC's supervisor on May 8, 2020 who followed up with Mr. Meneray. I was informed that the incident had occurred while off duty, that Mr. Meneray was not in uniform nor in a BC SPCA registered vehicle and was not purporting to be acting on behalf of the Society; the incident as described to me was in self defense and had been reported to the White Rock RCMP. Personal social media posts that the SPC had posted that included any potential ties (i.e. hashtags) to his status as an SPC were removed and it was believed that the incident had been taken care of.
>
> In the evening of May 12, 2020, it was brought to my attention that there were posts made by Mr. Meneray on a different social media website similar to the post identified on May 7th, including additional video and still photographs of

> the incident and a variety of messages related to it. The following morning May 13, 2020 the Human Resources department and Administration of the BCSPCA were also informed by multiple sources of these recent social media posts. After review the nature of the posts and associated risk to the organization a decision was made to suspend the SPC pending an investigation. This decision was consistent with the BCSPCA's normal practice when a significant incident involving an employee that poses potential risk needs to be investigated.
>
> Mr. Meneray and his union were informed that such investigation could also be conducted by Police Services.
>
> Mr. Meneray is represented by CUPE local 1622 and all further communication was via his union representation at their request.
>
> CUPE local 1622 representatives were informed of the duty of the Society to report the incident to Police Services and that there was a possibility that if a complaint was lodged pursuant to the Special Provincial Constable Complaint Regulation, such complaint could be investigated by the Society, and external party or the Ministry itself.
>
> Upon encouragement of his union representatives Mr. Meneray sought medical attention and has since been approved for short-term disability leave benefits and as such he has been medically unavailable to the Society in order for us to complete our investigation.
>
> For context, at the BC SPCA, when we place an employee on paid suspension pending investigation, we assume no finding of wrongdoing until proven otherwise through the investigation process. This allows us to mitigate any potential additional risk while we gather all of the relevant facts and make a decision as to whether the conduct was culpable or non-culpable and if any remedial action is warranted.
>
> [Emphasis added.]

[33] The PSD cancelled Mr. Meneray's SPC appointment the same day.

C. The Investigation

[34] Around November 5, 2020, the Petitioner returned to work from his medical leave and started on a gradual return to work program.

[35] The Investigation was resumed following Mr. Meneray’s return to work. It was conducted by Mr. Eccles. It consisted of two interviews with the Petitioner. They took place on November 26, 2020, and December 17, 2020. The interviews of the Petitioner were conducted by Mr. Eccles and Jaclyn Jacobson, Manager, Employee Relations for the SPCA. Two CUPE representatives attended the interviews: Ms. Ott and Ms. Morgan.

[36] During the November 26, 2020 interview (the “first interview”), the Petitioner confirmed that:

a) He had reviewed the Social Media Policy when he signed the Policy Acknowledgment Form;

b) He was off-duty at the time of the Incident and did not identify himself as an APO or SPC to the cyclist;

c) He felt the cyclist had received the justice he deserved; and

d) When asked if there was anything he would do differently, he would not post anything on social media but otherwise would do "exactly the same without a doubt".

[37] Unbeknownst to Mr. Eccles and Ms. Jacobson, Mr. Meneray had recorded the entire interview without their consent. His surreptitious recording included the private conversations between Mr. Eccles and Ms. Jacobson while they held confidential caucuses.

[38] Mr. Eccles believed that his private conversations with Ms. Jacobson might have been recorded when he saw a posting on the Petitioner's Instagram account which included an excerpt of something that Mr. Eccles had said to Ms. Jacobson during their confidential caucus.

[39] During the second interview, held on December 17, 2020, Mr. Meneray admitted that he had recorded the first interview. On December 23, 2020, Ms. Ott provided a copy of the surreptitious recording to Ms. Jacobson. The Employer considered the surreptitious recording to be a violation of s. 184 of the *Criminal Code*.

D. The Termination

[40] On January 6, 2021, the SPCA terminated the Petitioner’s employment. Notice of the termination was provided via a letter (the “Termination Letter”) bearing the same date, which stated that “your employment as an Animal Protection Officer

is terminated for cause effective immediately". Two "primary reasons" were provided for the termination: "assault of an unidentified person on May 6, 2020 and subsequent conduct"; and "breach of Section 184 of the *Criminal Code of Canada*".

[41] The Termination Letter set out various grounds for the termination, such as damage to the Employer's reputation by his off-duty conduct, insubordination, frustration of the employment contract, breach of trust, violation of the *Criminal Code*, loss of confidence that Mr. Meneray will exercise his authority as an SPC with appropriate restraint, and Mr. Meneray's lack of remorse and insight into his wrongdoing.

[42] On January 16, 2021, CUPE grieved the Petitioner's termination. The parties subsequently appointed an arbitrator for the hearing of the grievance, which is currently scheduled for March 2023.

E. Procedural History

[43] This petition seeking judicial review was filed on July 28, 2021. The SPCA filed an initial response on September 10, 2021, which was followed by the Minister's response on September 16, 2021. The SPCA filed an amended response on September 17, 2021, in which they raised a preliminary objection on the basis of delay.

[44] The delay argument was heard by Justice Edelmann on November 26, 2021. The application was dismissed with oral reasons on December 8, 2021.

[45] On February 18, 2022, the Petitioner brought an application for production of the RCMP file. That application was heard and granted by Justice Giaschi.

[46] This petition hearing was set for two days, and commenced in September 2022. Due to inadequate time estimates by counsel, the matter required an additional two days of hearing, which were completed at the end of October 2022.

IV. Judicial Review in Relation to Actions of the SPCA Respondents

[47] The issues raised in the petition regarding the SPCA's actions are as follows:

a) Is the decision of the SPCA regarding what process to follow when investigating and disciplining Mr. Meneray, subject to judicial review?

b) If so, what is the applicable standard of review?

c) Was the decision of the SPCA that neither the *Police Act* nor the *SPC Regulation* governed the investigative and disciplinary process in relation to Mr. Meneray, reasonable, or if the correctness standard applies, was this decision correct?

d) Does an arbitrator appointed under the *Labour Relations Code* have jurisdiction to adjudicate disputes arising from the investigation and dismissal of the Petitioner?

e) In the event the Petitioner is successful, what is an appropriate remedy?

[48] I will now address the first issue.

A. Availability of Judicial Review

[49] The SPCA Respondents do not dispute that this Court, as a superior court of inherent jurisdiction, retains a broad power to grant prerogative remedies, including relief in the nature of *certiorari*. However, it is submitted that judicial review, as a public law remedy, is not available to the Petitioner because the SPCA is not a public body, and even if it is a public body, the decision is not of a sufficiently public nature.

[50] In *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall,* 2018 SCC 26 [*Highwood*] the Court held that judicial review is only available where there has been an exercise of state authority and where that exercise is of a sufficiently public character. The Court explained the limits on judicial review, as follows:

> [14] Not all decisions are amenable to judicial review under a superior court's supervisory jurisdiction. Judicial review is only available where there is an exercise of state authority and where that exercise is of a sufficiently public character. Even public bodies make some decisions that are private in nature — such as renting premises and hiring staff — and such decisions are

> not subject to judicial review: *Air Canada v. Toronto Port Authority*, 2011 FCA 347, 3 F.C.R. 605, at Para. 52. In making these contractual decisions. the public body is not exercising "a power central to the administrative mandate given to it by Parliament", but is rather exercising a private power (ibid.). Such decisions do not involve concerns about the rule of law insofar as this refers to the exercise of delegated authority.
>
> [15] Further, while the private law remedies of declaration or injunction may be sought in an application for judicial review (see, for example, *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241, s. 2(2)(b) this does not make the reverse true. Public law remedies such as certiorari may not be granted in litigation relating to contractual or property rights between private parties: *Knox*, at para. 17. Certiorari is only available where the decision-making power at issue has a sufficient public character...
>
> [Citations omitted.]

[51] Thus, determining whether judicial review is available in this case, is done by answering the following two questions:

1. Is the SPCA a public body?

2. Was the decision of the SPCA of a sufficiently public character?

[52] I turn to the first question.

1. Is the SPCA a Public Body?

[53] The SPCA Respondents submit that the SPCA is not a public body, as evidenced by its enabling legislation, and the fact that it is not listed as a public body in Schedule 2 of the *Freedom of Information and Protection of Privacy Act,* R.S.B.C. 1996, c. 165 [*FIPPA*].

[54] While there is no dispute that the SPCA is not a government entity or Crown corporation, those are not the only circumstances under which it can be considered a public body whose decisions may be subject to judicial review.

[55] In *Wise v. Legal Services Society,* 2008 BCSC 255, the Court cites Donald Brown and The Honourable John Evans' *Judicial Review of Administrative Action in Canada* (Thomson Reuters) (loose-leaf updated 2022) at § 1:13 to set out certain

factors that may be helpful for determining if an entity is considered a public body for the purposes of the *JRPA:*[3]

> …However, some decision-making will not have all the characteristics of either paradigm, and consequently may be difficult to classify as either public or private for the purpose of the availability of the prerogative remedies.
>
> Accordingly, it will be necessary to consider a range of factors in deciding into which category the activity should fall, since the remedies are not limited to reviewing decisions made pursuant to a statutory power. The first factor is the nature of the decision-maker, including whether it derives its funding from the public purse, whether its members are appointed by the government, and the extent to which it is subject to government control. The second factor focuses on the source and nature of this decision-making power. Is it statutory and, if so, is the power general or specific? As well, a determination must be made as to whether the statute requires resort to the decision-making in question and, conversely, the extent to which the power in question derives from either contract or the ownership of property. The third perspective is to consider the description of the decision-making body's functions as found in the enabling statute or other constitutive document. In particular, the inquiry ought to address whether those functions advance only the interests of members, or whether they serve the broader public interest. In other words, are they regulatory in nature, performing functions that would otherwise be undertaken by government, or do they enable the body to conduct a business or other "private" activities?

[56] Thus, to determine whether the SPCA is a public body for the purposes of this judicial review, it is helpful to consider the nature of the SPCA, the source and nature of its decision-making power, and its functions and duties. I begin with the statute under which the SPCA operates.

[57] Although it is called a “society”, the SPCA is not established under the *Societies Act*, S.B.C. c. 18. Rather, it is continued under s. 3 of the *PCAA*.

[58] Sections 6 and 6.1 of the *PCAA* provide for ministerial oversight of certain of the SPCA’s actions, such as permitting the Minister to disallow a bylaw created by the SPCA, or permitting the Minister to make an order that the SPCA report on any matter relevant to the administration of the *PCAA* or the exercise of the SPCA’s powers or duties under the *PCAA*.

[3] Pinpoint at Part II, Chapter 1, II. *Certiorari* and Prohibition, B. The Scope of Remedies, 5. Public Decisions, § 1:13. Classification as “Public” or “Private”.

[59] Section 7 of the *PCAA* empowers the SPCA to establish and operate public shelters for stray and seized animals, and to enter into agreements with various levels of government to act as a pound keeper.

[60] Section 9 requires the SPCA to fulfill certain "corporate" duties and obligations, such as maintaining an address in BC, holding annual general meetings, filing audited financial statements, and keeping a register of members.

[61] Section 10 permits the SPCA to appoint an authorized agent to prevent cruelty to animals. This is the provision under which Mr. Meneray was appointed. It provides, as follows:

> 10. (1) The society may appoint an officer or employee of the society or any other person as an authorized agent for the purposes of this Act.
>
> (2) An authorized agent may exercise the powers of an authorized agent under this Act or any other law relating to the prevention of cruelty to animals only if he or she has been appointed as a special provincial constable under the *Police Act*.

[62] The authorized agent performing the functions under the *PCAA*, has extraordinary powers that are not available to an ordinary citizen. For example, they can seize animals that are in distress (s. 11), enter any premises with or without a warrant subject to certain conditions (ss. 13–14), and inspect or remove relevant records or things from a person or premises (ss. 15.1-15.2). These powers are, in some instances, similar to what a peace officer would have. Indeed, in locations where the SPCA does not function through an authorized agent, only a peace officer or someone else appointed by the Minister, is permitted to exercise the powers of an authorized agent under the *PCAA* (s. 22).

[63] Part 3.1 of the *PCAA* provides for review or appeal of certain decisions made by the SPCA or its authorized agent. Section 20.2 enables the SPCA to review a decision of an authorized agent to take custody of an animal under section 10.1 or 11. Section 20.3 permits appeals of a decision made by the SPCA, to the British Columbia Farm Industry Review Board (the "FIRB").

[64] In the exercise of its powers and duties, the FIRB is governed by the *Natural Products Marketing (BC) Act*, R.S.B.C., 1996, c. 330 under which it is continued, and the *Administrative Tribunals Act*, S.B.C., 2004, c. 45 which allows for judicial oversight of the FIRB's decisions: *E.M. v. British Columbia Society for the Prevention of Cruelty to Animals*, 2017 BCSC 2608 at para. 4.

[65] In *BC Society for the Prevention of Cruelty to Animals v. British Columbia (Farm Industry Review Board),* 2013 BCSC 2331, Justice Grauer (as he then was) explained the current legislative regime that applies to the SPCA:

> [1] In April 2012, the legislature passed the *Prevention of Cruelty to Animals Amendment Act, 2012*, SBC 2012, c 15, amending the *Prevention of Cruelty to Animals Act*, RSBC 1996, c 372 (the "*PCAA*"). It thereby enacted a program of administrative reform to decision-making in the area of animal welfare, formerly the exclusive preserve of the Petitioner, the British Columbia Society for the Prevention of Cruelty to Animals ("SPCA").
>
> [2] Among the reforms was the introduction of an independent appeals process involving the British Columbia Farm Industry Review Board ("FIRB").

[66] Prior to 2012, no appeal of an SPCA decision was available to the FIRB. Rather, an affected party could seek judicial review to challenge the decisions of the SPCA relating to animal welfare: see for example, *Ulmer v. British Columbia Society for the Prevention of Cruelty to Animals*, 2010 BCCA 98.

[67] Having regard to the applicable jurisprudence and in considering the nature of the SPCA, the source and nature of its decision-making power, and its functions and duties, I conclude that the SPCA qualifies as a public body for the purposes of judicial review.

[68] This is not to say that there are not aspects of the SPCA structure that are more akin to a private society – for example, it is funded through private donations and permits the public at large to become members. However, there are other elements that clearly take it outside of the realm of a private society. The SPCA advances the interests of the public, and not just its members. It plays an important role in the area of animal welfare, and but for the SPCA, the government would likely occupy this area.

[69] The powers granted to the SPCA through its enabling legislation, the provisions permitting ministerial oversight, and the availability of review and appeal mechanisms to challenge decisions made by the SPCA, are all indicia that the SPCA is a public body for the purposes of this judicial review.

[70] In coming to this conclusion, I reject the notion that simply because the SPCA is not listed in Schedule 2 of *FIPPA*, or that it also has corporate duties and responsibilities, means that it is not a public body for the purposes of the *JRPA*. While those are important considerations, they must be considered within the context of all of the other aspects of the SPCA noted above, which clearly put it within the scope of a public body.

[71] Indeed, despite taking the position that the SPCA is not a public body, the SPCA Respondents concede that the SPCA does exercise state authority through its enabling statute, thereby making some of the decisions of the SPCA subject to judicial review. The following passage is found in the Written Submissions of the SPCA Respondents:

> 83. In the case at hand, the SPCA's state authority originates from the PCCA [sic] as its enabling statute. Under Part 3 of the PCCA [sic], the SPCA has the delegated authority to relieve distress in animals, including the authority to enter premises with or without a warrant and to conduct inspections. Those decisions made pursuant to their authority under Part 3 are statutory powers of decision subject to judicial review as decisions emanating from the government.

[72] In their objection to the SPCA being characterized as a public body for the purpose of this judicial review, the SPCA Respondents argue as follows:

> 84. In contrast, the SPCA's authority to make employment decisions, such as to investigate or terminate employees, does not arise from any provision of the PCCA [sic]. For this reason, they are not subject to judicial review, as they cannot be considered as decisions emanating from the government. Instead, they are akin to the private decision of hiring staff contemplated by the Supreme Court of Canada as being immune from judicial review in *Highwood Congregation* at para. 14.

[73] However, as will be seen below, this argument actually relates to the nature of the decision made by the SPCA, i.e., whether it was of a sufficient public character, rather than whether the SPCA can be considered a public body.

2. Was the Decision of the SPCA of a Public Character?

[74] The SPCA Respondents advance two arguments in support of their position that the decision it made in relation to Mr. Meneray was not of a public character. The first argument is articulated in the Written Submissions of the SPCA Respondents as follows:

> 85. Put another way, when the Petition Respondents investigated and terminated the Petitioner's employment, they did not exercise any powers granted to them under their home statute. Rather, they exercised their contractual and management rights under article 3 of the Collective Agreement and pursuant to the implied terms of the employment contract.

[75] However, this argument is based on tautological reasoning. It ignores the fact that the issue before this Court is a jurisdictional one, i.e., whether the SPCA was correct in conducting its investigation and termination of Mr. Meneray under the Collective Agreement, rather than using the procedures set out in the *Police Act* and *SPC Regulation*.

[76] The second argument advanced by the SPCA Respondents, is that decisions made by a public body in matters of employment are governed by the law of contract. The SPCA submits that, as a general presumption, employment decisions are not reviewable under the *JRPA* even where the employer is a public body and the employee is an office-holder. Rather, these are private decisions which are not generally subject to judicial review, unless the contractual rights have been modified by statute. In support, the SPCA Respondents rely on *Dunsmuir*.

[77] The Supreme Court of Canada held in *Dunsmuir* that while the rights of public employees employed under a contract of employment are presumed to be governed by the law of contract, the public authority cannot contract out of statutory duties. The Court explained as follows:

> [102] In our view, the existence of a contract of employment, not the public employee's status as an office holder, is the crucial consideration. Where a public office holder is employed under a contract of employment the justifications for imposing a public law duty of fairness with respect to his or her dismissal lose much of their force.
>
> [103] Where the employment relationship is contractual, it becomes difficult to see how a public employer is acting any differently in dismissing a public

> office holder and a contractual employee. In both cases, it would seem that the public employer is merely exercising its private law rights as an employer...
>
> …
>
> [106] Of course, a public authority must abide by any statutory restrictions on the exercise of its discretion as an employer, regardless of the terms of an employment contract, and failure to do so may give rise to a public law remedy. A public authority cannot contract out of its statutory duties. But where a dismissal is properly within the public authority's powers and is taken pursuant to a contract of employment, there is no compelling public law purpose for imposing a duty of fairness.
>
> [Emphasis added.]

[78] Rather than supporting the SPCA Respondents' position, in my view, *Dunsmuir* further emphasizes the reason why the decision of the SPCA to proceed under the Collective Agreement rather than the *Police Act* and *SPCA Regulations,* is one that raises matters of a public character. If indeed it is required to act in accordance with these enactments, then the decision not to do so does fall into the sphere of a matter of a public character.

[79] This conclusion is also supported by the BC Court of Appeal's decision in *Casavant v. British Columbia (Labour Relations Board),* 2020 BCCA 159, leave to appeal to SCC ref'd, 39317 (21 January 2021). The Court held that insofar as the decision under review goes to considering what process should have been followed for investigating and disciplining the employee, it is amenable to judicial review: *Casavant* at paras. 35–36, and 38.

[80] In *Casavant* the underlying dispute related to the termination of the appellant's employment as a conservation officer, after he refused to follow an order to euthanize two bear cubs. The termination was grieved by the union under their collective agreement, and an arbitrator was appointed under the *Labour Relations Code*, R.S.B.C. 1996, c. 244. Before the arbitration was completed, Mr. Casavant settled with the employer. However, he later applied to the Labour Relations Board ("LRB") to have the matter reopened. The LRB dismissed his application, and the appellant sought judicial review of the LRB's decision. At the judicial review hearing, Mr. Casavant raised a jurisdictional challenge. He argued that based on his

employment as a Special Provincial Constable, all disciplinary proceedings against him should have proceeded in accordance with the *Police Act* and not the collective agreement. The chambers judge declined to address the jurisdictional question on the basis that this issue had not been raised before the LRB, and should not be addressed for the first time on judicial review. The Court of Appeal allowed the appeal in part, concluding that the chambers judge had erred in declining to address the jurisdictional challenge.

[81] In this case, the decision under consideration is not the SPCA's decision to terminate Mr. Meneray. Rather, it is the decision of the SPCA to not follow the *Police Act* and *SPC Regulation* procedures when disciplining and terminating Mr. Meneray from his employment (the "SPCA Decision").

[82] In arriving at the conclusion that the SPCA Decision is of a sufficiently public character, I have also considered the guidance provided by Justice Stratas in *Air Canada v. Toronto Port Authority*, 2011 FCA 347, which was more recently summarised by the Ontario Court of Appeal in *Setia v. Appleby College*, 2013 ONCA 753 at para. 34. Specifically, I have considered: (a) the character of the matter for which the review is sought; (b) the nature of the decision-maker and its responsibilities; (c) the extent to which a decision is founded in and shaped by law as opposed to private discretion; (d) the body's relationship to other statutory schemes or other parts of government; (e) the extent to which a decision-maker is an agent of government or is directed, controlled or significantly influenced by a public entity; (f) the suitability of public law remedies; (g) the existence of a compulsory power; and (h) an "exceptional category of cases where the conduct has attained a serious public dimension (collectively referred to as the "*Setia* factors").

[83] In *Setia*, the Court of Appeal concluded that the issue before it did not meet the "public character" test. However, in my view, the facts of *Setia* are distinguishable from the case at bar. In *Setia*, the Court was dealing with a decision regarding the discipline of a student, which it determined was fundamentally governed by the contractual relationship between the parents and the school.

[84] This judicial review engages issues of jurisdiction and process, which both take on a public, rather than private, character. The public character of the circumstances is further supported by the fact that the Petitioner's appointment was made by the Minister pursuant to the *Police Act*; his position included the duties and responsibilities of an SPC, a peace officer, and a public officer; and the SPCA was involved with the exercise of state powers under the authority to enforce the provisions of the *PCAA* and the animal cruelty provisions of the *Criminal Code*.

[85] I reject the notion, advanced by the SCPA Respondents, that because the *PCAA* did not authorize the SPCA Decision, this matter is not amenable to judicial review.

[86] In *Martineau v. Matsqui Institution*, [1980] 1 SCR 602, 1979 CanLII 184 (S.C.C.), the Supreme Court of Canada held at pg. 638, that relief in the nature of *certiorari* is available in circumstances where a public body has made a decision that is of a sufficiently public character and affects the rights, interests, property, privilege, or liberty of any person.

[87] This principle was affirmed more recently by the Court of Appeal in *Strauss BCCA*. In *Strauss v. British Columbia (Minister of Public Safety),* 2018 BCSC 1414, ("*Strauss BCSC*"), the question before the Court was whether the Deputy Warden's decision to revoke the petitioner's security clearance was subject to judicial review. The petitioner had worked at a provincial correctional institution as a contractor through her employer. Applying the factors from *Setia*, Justice Choi found that the decision was public in nature. She noted that while there was no direct contractual relationship between the Province and Ms. Strauss, the decision was made by a Crown employee, and was motivated by safety and security concerns for the public. Justice Choi concluded that both subsections 2(2)(a) and (b)[4] of the *JRPA* applied.

[88] The appellant was partially successful on appeal. In *Strauss BCCA*, the Court of Appeal found that subsection 2(2)(b) of the *JRPA* did not apply because the

[4] Subsections 2(2)(a)-(b) provide two avenues for obtaining relief on application for judicial review: either by means of *mandamus*, prohibition, or *certiorari* (s. 2(2)(a)), or by means of a declaration or injunction in relation to a statutory power of decision (s. 2(2)(b)).

Deputy Warden's decision to revoke was not a power conferred by statute. However, the Court of Appeal upheld Justice Choi's finding that subsection 2(2)(a) of the *JRPA* had application because there was a sufficient public dimension to the decision – namely that the decision was motivated by safety and security concerns, and that the security clearance was a part of the comprehensive regulatory scheme for guarding and serving prisoners.

[89] Justice Groberman in *Strauss BCCA* expounded on the available relief where the public body exercises powers that are not conferred by an enactment as follows:

> [24] Where a public authority is operating under powers that do not arise from an enactment, remedies under s. 2(2)(b) of the *Judicial Review Procedure Act* will not be available, though remedies under s. 2(2)(a) will remain available if the public authority's activities have a sufficiently public character.

[90] I am satisfied that the SPCA Decision relating to the appropriate disciplinary regime which it ought to apply to Mr. Meneray, is sufficiently public in character, and therefore subject to judicial review.

[91] I now turn to the standard of review.

B. Standard of Review

[92] There is no legislated standard of review applicable to this case. As such, the appropriate standard of review must be determined under the common law.

[93] The parties disagree as to which standard of review applies to the SPCA Decision. The Petitioner argues that the standard of review is one of correctness. The SPCA Respondents argue that the applicable standard is one of reasonableness.

[94] In *Vavilov*, the Supreme Court of Canada established a presumed standard of reasonableness to statutory decision-makers. It held that the correctness standard applies in certain situations, such as where the court is answering constitutional questions, general questions of central importance to the legal system as a whole,

and questions regarding the jurisdictional boundaries between two or more administrative bodies: *Vavilov* at paras. 17, 53.

[95] With respect to the latter question, the Supreme Court of Canada noted that only a narrow subset of jurisdictional questions involving competing boundaries of authority between two or more administrative bodies requires a correctness standard: at paras. 17, 53. In a departure from *Dunsmuir,* the Court in *Vavilov* explicitly stated that it would "cease to recognize jurisdictional questions as a distinct category attracting correctness review": *Vavilov* at para. 65. The Court further held that broader jurisdictional questions, such as the interpretation of an administrative decisionmaker's enabling statute, may be assessed on the standard of reasonableness: *Vavilov* at paras. 65–68.

[96] However, the Court in *Vavilov* also noted that there are constraints on the decisionmaker in terms of the interpretation of their own statutes:

> [68] Reasonableness review does not give administrative decision makers free rein in interpreting their enabling statutes, and therefore does not give them licence to enlarge their powers beyond what the legislature intended. Instead, it confirms that the governing statutory scheme will always operate as a constraint on administrative decision makers and as a limit on their authority. Even where the reasonableness standard is applied in reviewing a decision maker's interpretation of its authority, precise or narrow statutory language will necessarily limit the number of *reasonable* interpretations open to the decision maker — perhaps limiting it to one. Conversely, where the legislature has afforded a decision maker broad powers in general terms — and has provided no right of appeal to a court — the legislature's intention that the decision maker have greater leeway in interpreting its enabling statute should be given effect…

[97] I conclude that the two substantive issues in this judicial review raise two different standards of review. The first substantive issue relates to whether the provisions of the *Police Act* and *SPC Regulation* apply to the circumstances of this case. On this issue, I conclude that the appropriate standard of review is reasonableness.

[98] In *Elsner v. British Columbia (Police Complaint Commissioner),* 2018 BCCA 147, the issue before the Court was whether the Police Complaint Commissioner had the authority under s. 93 of the *Police Act* to conduct an external investigation.

The Court held that the standard of review was reasonableness. In so doing, it noted that the central issue before it was one of statutory interpretation, and that there was no reason to not apply the "presumption that a tribunal's interpretation of its home statute is to be reviewed on a standard of reasonableness": *Elsner* at para. 68.

[99] Although *Elsner* was decided before *Vavilov*, the principles articulated are consistent with *Vavilov*: see *Vavilov* at paras. 25, 109. I see no basis upon which to deviate from them, or to find that the correctness standard should apply to this issue.

[100] The second substantive issue raised relates to whether an arbitrator or labour board has jurisdiction to adjudicate the disputes arising from the investigation and dismissal of the Petitioner. The SPCA Respondents concede, and I agree, that the appropriate standard of review is correctness, as the question involves issues of competing jurisdictions.

C. Applicability of the *Police Act* and *SPC Regulation*

[101] I begin first with the relevant provisions in the *Police Act*.

1. Police Act Disciplinary Provisions

[102] Mr. Meneray's appointment as an SPC was made pursuant to s. 9 of the *Police Act*, which states:

> **Special provincial constables**
>
> 9 (1) The minister may appoint persons the minister considers suitable as special provincial constables.
>
> (2) A special provincial constable appointed under subsection (1) is appointed for the term the minister specifies in the appointment.
>
> (3) Subject to the restrictions specified in the appointment and the regulations, a special provincial constable has the powers, duties and immunities of a provincial constable.

[103] Section 10 of the *Police Act* provides for the jurisdiction of police constables, as follows:

> **Jurisdiction of police constables**
>
> **10** (1) Subject to the restrictions specified in the appointment and the regulations, a provincial constable, an auxiliary constable, a designated constable or a special provincial constable has
>
> (a) all of the powers, duties and immunities of a peace officer and constable at common law or under any Act, and
>
> (b) jurisdiction throughout British Columbia while carrying out those duties and exercising those powers.
>
> (2) If a provincial constable, auxiliary constable, designated constable or special provincial constable exercises jurisdiction under subsection (1) in a municipality having a municipal police department, he or she must, if possible, notify the municipal police department in advance, but in any case must promptly after exercising jurisdiction notify the municipal police department of the municipality.

[104] The *Police Act* provides for the appointment of the following categories or "classes" of officers:

a) provincial constable (appointed under s. 6);

b) special provincial constable (appointed under s. 9);

c) designated constable (appointed under s. 4.1(11));

d) municipal constable (appointed under s. 26);

e) special municipal constable (appointed under s. 35);

f) auxiliary constable (appointed under s. 8);

g) enforcement officer (appointed under s. 18.1(11));

h) bylaw enforcement officer (appointed under s. 36).

[105] Part 11 of the *Police Act* establishes the rules and procedures for misconduct, complaints, investigations, discipline and proceedings, against "members" (collectively referred to as the "disciplinary provisions"). Part 11 is a "highly

specialized labour relations legislation dealing with the employment of police officers and the protection of the public by means of the disciplinary tools provided by the statute": *Florkow v. British Columbia (Police Complaint Commissioner),* 2013 BCCA 92 at para. 2.

[106] Section 77 defines “misconduct”, and sets out various forms of misconduct that could result in disciplinary action. Both on-duty and off-duty conduct is captured in s. 77. For example, s. 77(3)(h) stipulates that “discreditable conduct” can occur “when on or off-duty”, and s. 77(3)(j) specifically describes “improper off-duty conduct”.

[107] Sections 78–155 of the *Police Act* set out the process that must be followed respecting alleged misconduct of a municipal police officer.

[108] As noted, Part 11 applies to “members”. A “member” is defined in s. 76(1) of the *Police Act* as follows:

> “**member**” means a municipal constable, deputy chief constable or chief constable of a municipal police department;

[109] For other classes of officers that are not “members” under Part 11, section 74 authorizes the Lieutenant Governor in Council to make regulations, including:

> **Power to make regulations**
>
> 74 (2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:
>
> …
>
> (b) developing procedures for handling complaints from members of the public against a class of officer;
>
> …
>
> (u) governing the qualifications, ranks, conduct, dress, duties, suspension, promotion, dismissal, punishment or discipline of a class of officers or of 110 investigators;
>
> …

[110] Sections 74(3) and (4) authorize the Minister and the Lieutenant Governor in Council, respectively, to make different regulations according to different classes of officers.

[111] Pursuant to s. 74, various regulations have been enacted to regulate the complaint, investigation and discipline procedures for various other classes of officers. For designated constables, those regulations are agency-specific and include the following:

a) Organized Crime Agency of British Columbia Complaints and Operations Regulation, B.C. Reg 229/2002 for designated constables;

b) St/'at/'imx Tribal Police Service Complaints and Operations Regulation, B.C. Reg 385/99 for the Stl'atl'imx Tribal Police Service; and

c) South Coast British Columbia Transportation Authority Police Service Complaints and Operations Regulation, B.C. Reg 484/2004 for the South Coast British Columbia Transportation Authority Police Service.

[112] For special municipal constables and SPCs, the regulations are class-specific.

[113] The *Special Municipal Constables Complaints Regulation*, B.C. Reg 46/2016 [*SMC Regulation*], incorporates special municipal constables into the definition of "member" contained in the *Police Act*, as follows:

> **Application of Part 11 of Act**
>
> 2 (1) The provisions of Part 11 *[Misconduct, Complaints, Investigations, Discipline and Proceedings]* of the Act apply in relation to a special municipal constable as if the special municipal constable were
>
> (a) a municipal constable employed with the municipal police department of the municipal police board that appointed the special municipal constable, and
>
> (b) an employee of the municipal police board referred to in paragraph (a).
>
> (2) In applying Part 11 of the Act for the purposes of this regulation, the rules set out in sections 3 to 7 of this regulation apply.
>
> …
>
> **References to "member" in Part 11 of Act**
>
> (3) The definition of "member' in section 76(1) [*definitions and interpretation*] of the Act and, for certainty, each reference to "member" in Part 11 of the Act, is to be read as if that definition included a reference to "special municipal constable".

[114] Importantly, no similar provision or language is contained in the *SPC Regulation*. Thus, while all of the above regulations incorporate Part 11 of the *Police Act* by express reference to that part, the *SPC Regulation* does not.

2. SPC Regulations

[115] The *SPC Regulation* – which was in force at the relevant time – establishes the following procedure for complaints made against a special provincial constable:

> **Complaints**
>
> 3 (1) A person may make a complaint against a special provincial constable.
>
> (2) The person may submit the complaint to
>
> (a) the director, or
>
> (b) the supervisor.
>
> (3) The complaint must be in writing and include the following information:
>
> (a) the complainant's full name;
>
> (b) an address for delivery of any notices to the complainant under this regulation;
>
> (c) the details of the complaint, including the respondent's name if known;
>
> (d) a description of the incident, in as much detail as possible;
>
> (e) the names of any witnesses and their respective addresses, if known.
>
> (4) If the complaint is submitted to the director under subsection (2), the director must promptly forward the complaint to the supervisor.
>
> (5) If the complaint is submitted to the supervisor under subsection (2), the supervisor must promptly send a copy of the complaint to the director.
>
> (6) On receiving the complaint, the supervisor must promptly provide the respondent with a copy of the complaint.

[116] Section 5 provides a process for the informal resolution of a complaint, failing which the complaint must be investigated in accordance with the process set out in s. 4. The provisions are set out below:

> **Investigation of complaints**
>
> 4 (1) If a supervisor does not attempt to resolve a complaint informally under section 5, the supervisor must
>
> (a) cause an investigation to be conducted into that complaint, and

(b) promptly provide notice of the investigation to the respondent and the director.

(2) If a supervisor is unsuccessful in resolving a complaint informally under section 5, the complainant may request that an investigation in respect of the complaint be conducted.

(3) The request under subsection (2) must be in writing and must be made to the supervisor within 10 days after informal resolution has failed.

(4) If a request for an investigation into a complaint is made in accordance with subsection (3), the supervisor must

(a) cause an investigation to be conducted into the complaint, and

(b) promptly notify the respondent and the director of the investigation.

Informal resolution

5 (1) A supervisor who receives a complaint under section 3 may attempt to informally resolve the complaint with the complainant and the respondent.

(2) A complaint is resolved informally if a resolution of the complaint is proposed with which the complainant and respondent agree.

(3) Nothing in subsection (1) prevents informal resolution of a complaint at any time during an investigation into the complaint.

(4) If a complaint is resolved informally, the supervisor must

(a) make a record of the resolution or disposition and any disciplinary or corrective measures imposed, and

(b) promptly deliver a copy of that record to the complainant, the director and the respondent.

[117] A “supervisor” is defined in s. 1 as “the person designated by the employer of the special provincial constable to supervise that special provincial constable”.

[118] Pursuant to s. 6, the supervisor is not required to investigate complaints which are deemed frivolous or vexatious; do not primarily affect the complainant; or relate to conduct that occurred more than six months prior to the complaint being made. However, in such a case, the complainant may request a review of the supervisor’s decision.

[119] Section 7 requires the supervisor to provide the interested parties with a notice summarizing the investigation and its results, and any disciplinary or corrective measures that will be taken. The notice must be given within seven days of completion of an investigation into a complaint against an SPC.

[120] Available disciplinary or corrective measures are set out in s. 8, and include: dismissal; suspension; written or verbal reprimand; and various forms of directions entailing supervision, remedial training, or professional counselling.

[121] On November 22, 2021, Order in Counsel No. 632/2021 amended the *SPC Regulation* [*Amended SPC Regulation*].[5] The *Amended SPC Regulation* adds several new definitions, and makes changes to existing provisions which cumulatively appear to limit complaints to those made by members of the public about the SPC's performance of their SPC duties. Importantly, s. 2(2) of the *Amended SPC Regulation* appears to expressly preserve the employer's right to discipline an SPC for conduct unrelated to their "constabulary duties".

[122] The relevant amendments are as follows:

> 3. Section 1 is amended
>
> (a) by adding the following definitions:
>
> …
>
> "**constabulary duty**" in relation to a special provincial constable, means a power or duty referred to in section 9 (3) [*special provincial constables*] of the Act that the special provincial constable is authorized to exercise or required to perform;
>
> …
>
> 4. Section 2 is amended
>
> (a) by renumbering the section as section 2(1), and
>
> (b) by adding the following subsection:
>
> (2) Nothing in this regulation limits or prohibits any disciplinary or other actions that may be taken by the employer of an employee who is a special provincial constable in respect of conduct that does not involve a constabulary duty of the special provincial constable.
>
> …
>
> 6. Section 3 is repealed and the following substituted:
>
> Procedure for complaint by member of public
>
> 3 (1) A member of the public may make a complaint against a special provincial constable if the member of the public is directly affected by or directly witnesses conduct of the special provincial constable that is alleged to involve either of the following:

[5] *Special Provincial Constable Complaints and Discipline Regulation*, B.C. Reg. 206/98.

> (a) the improper exercise or performance of a constabulary duty;
>
> (b) neglect, without good or sufficient cause, to exercise or perform a constabulary duty.

[123] There is no dispute that the *Amended SPC Regulation* does not apply to the Petitioner's circumstances, though, as will be discussed later, it does assist in interpreting the *SPC Regulation* which does apply.

3. Previous Police Act Legislation

[124] The *Police Act* has also been amended, though those amendments occurred a number of years prior to this dispute. As the Petitioner's argument refers to these legislative changes, I have set them out below.

[125] Part 11 of the *Police Act* was enacted in 2010. Prior to the 2010 amendments, discipline of police officers was divided between the complaint and discipline procedures in the predecessor statute (the "*1988 Police Act*"), and the *Code of Professional Conduct Regulation*, B.C. Reg. 205/98 [*Code*]. The *Code* enumerated various disciplinary defaults and established the range of disciplinary or corrective measures that were available. Discreditable conduct and improper off-duty conduct were included as disciplinary defaults in the *Code*.

[126] The *Code* distinguished between an "officer" and a "police officer". They were defined separately in s. 1 as follows:

> "**officer**" means a person appointed under the [Police] Act as a provincial constable, special provincial constable, designated constable, municipal constable, special municipal constable, auxiliary constable or enforcement officer and includes a person who is a member of the Royal Canadian Mounted Police;
>
> "**police officer**" means municipal constable or special municipal constable;

[127] At s. 2, the stated purposes of the *Code* were to: (a) establish a code of conduct for police officers; (b) establish guidelines for municipal police departments and discipline authorities concerning appropriate disciplinary or corrective measure in respect of police officers; (c) assist municipal police departments in delivering fair,

impartial and effective police services; and (d) maintain public confidence in the police by ensuring police accountability.

[128] Section 16 of the *Code* defined the "disciplinary default" of improper off-duty conduct for police officers.

[129] Following the 2010 amendments, the *Code* provisions were incorporated into Part 11 of the *Police Act* (primarily in ss. 77 and 126). The disciplinary default relating to off-duty conduct of police officers is now incorporated into ss. 77(3)(h) and (j) of Part 11 of the *Police Act*.

4. Analysis

[130] The Supreme Court of Canada in *Vavilov* explained the manner in which reasonableness review is to be conducted:

> [116] Reasonableness review functions differently. Where reasonableness is the applicable standard on a question of statutory interpretation, the reviewing court does not undertake a *de novo* analysis of the question or "ask itself what the correct decision would have been": *Ryan*, at para. 50. Instead, just as it does when applying the reasonableness standard in reviewing questions of fact, discretion or policy, the court must examine the administrative decision as a whole, including the reasons provided by the decision maker and the outcome that was reached.

[131] The Court went on to elaborate on the importance of the reasons and outcome, when conducting this analysis:

> [83] It follows that the focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome. The role of courts in these circumstances is to *review*, and they are, at least as a general rule, to refrain from deciding the issue themselves. Accordingly, a court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker, attempt to ascertain the "range" of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the "correct" solution to the problem. The Federal Court of Appeal noted in *Delios v. Canada (Attorney General)*, 2015 FCA 117, 472 N.R. 171, that, "as reviewing judges, we do not make our own yardstick and then use that yardstick to measure what the administrator did": para. 28; see also *Ryan*, at paras. 50-51. Instead, the reviewing court must consider only whether the decision made by the administrative decision maker — including both the rationale for the decision and the outcome to which it led — was unreasonable.

> [84] As explained above, where the administrative decision maker has provided written reasons, those reasons are the means by which the decision maker communicates the rationale for its decision. A principled approach to reasonableness review is one which puts those reasons first. A reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with "respectful attention" and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion: see *Dunsmuir*, at para. 48, quoting D. Dyzenhaus, "The Politics of Deference: Judicial Review and Democracy", in M. Taggart, ed., *The Province of Administrative Law* (1997), 279, at p. 286.

[132] When reasons are not required to be given by the decision maker, or are not provided, two scenarios may arise. In the first scenario, the record and the circumstances surrounding the making of the decision (i.e., context), may shed light on the basis for the decision, or allow the court to deduce reasons. In the second scenario, the record and the context do not shed light on the basis for the decision. The Court in *Vavilov* addressed these circumstances, and provided the following guidance:

> [137] Admittedly, applying an approach to judicial review that prioritizes the decision maker's justification for its decisions can be challenging in cases in which formal reasons have not been provided. This will often occur where the decision-making process does not easily lend itself to producing a single set of reasons, for example, where a municipality passes a bylaw or a law society renders a decision by holding a vote: see, e.g., *Catalyst*; *Green*; *Trinity Western University*. However, even in such circumstances, the reasoning process that underlies the decision will not usually be opaque. It is important to recall that a reviewing court must look to the record as a whole to understand the decision, and that in doing so, the court will often uncover a clear rationale for the decision: *Baker*, at para. 44. For example, as McLachlin C.J. noted in *Catalyst*, "[t]he reasons for a municipal bylaw are traditionally deduced from the debate, deliberations and the statements of policy that give rise to the bylaw": para. 29…
>
> [138] There will nonetheless be situations in which no reasons have been provided and neither the record nor the larger context sheds light on the basis for the decision. In such a case, the reviewing court must still examine the decision in light of the relevant constraints on the decision maker in order to determine whether the decision is reasonable. <u>But it is perhaps inevitable that without reasons, the analysis will then focus on the outcome rather than on the decision maker's reasoning process.</u> This does not mean that reasonableness review is less robust in such circumstances, only that it takes a different shape.
>
> [Emphasis added.]

[133] Here, there are no formal reasons for the SCPA Respondents' decision that the provisions of the *Police Act* and *SPC Regulation* did not apply to the circumstances. Consequently, this Court must consider the record, the context within which the decision was made, and the outcome. With respect to the record, some of the information considered is referenced in the previous sections. It includes the correspondence and communications between the parties, internal notes and memoranda, the Termination letter, and the various legislative enactments and memoranda that formed part of the material before the decision maker. However, the record also includes many other documents and correspondence relied on by the parties that I have not mentioned in these Reasons. I have considered all of it, with the exception of inadmissible hearsay that was appropriately objected to by counsel.

[134] With those principles in mind, I turn to considering the issues.

[135] There is no real dispute that the SPCA did not follow either the *Police Act* or the *SPC Regulations* when initiating the Investigation and other disciplinary action against Mr. Meneray.[6] The SPCA Respondents argue that they were not required to because the *Police Act* has no application to an SPC, and the circumstances that require resort to the *SPC Regulation* did not arise in this case. Specifically, for an investigation to be triggered by the *SPC Regulation* (an "SPC Investigation"), the SPCA must receive a complaint in writing from a member of the public regarding on-duty SPC conduct. Failing such, the disciplinary process would fall under the Collective Agreement.

[136] The Petitioner does not deny that Part 11 of the *Police Act* is not expressly incorporated into the *SPC Regulation*, and that the *SPC Regulation* requires a complaint be made to initiate the process for an SPC Investigation. However, he argues that because an SPC exercises powers similar to that of a police officer, the *SPC Regulations* must be interpreted to include off-duty conduct of an SPC. Further,

[6] The SPCA Respondents do make an alternative argument that if the *SPC Regulation* did apply to Mr. Meneray's circumstances, their investigation and termination of the Petitioner's employment were carried out in accordance with the *SPC Regulation*, either entirely or substantively. However, for the purposes of this part of the analysis, it is not necessary to address that alternative argument.

he says that the Employer received two complaints, each of which were sufficient to trigger the SPC Investigation process in this case.

[137] After applying the *Vavilov* principles referenced above regarding the manner in which a reasonableness review is conducted, I conclude that the Petitioner's argument fails on both grounds.

a) The Complaints

[138] The Petitioner says the affidavit evidence supports his contention that at least two complaints had been made with respect to Mr. Meneray, which were sufficient to trigger an SPC Investigation. For example:

a) In Mr. Eccles's Affidavit #1 he avers to having been contacted on May 12, 2020, by a friend who had seen a concerning post relating to the SPCA in a Facebook group, and also receiving a call from a former SPCA employee who asked if Mr. Eccles had seen "these posts";

b) In Mr. Eccles's notebook notes for May 13, 2020, state "complaints from 2 public, HQ [or HR], Marcie"; and

c) In the June 25, 2020 email to Ms. Alexander, Mr. Eccles states that "the Human Resources department and Administration of the BCSPCA were also informed by multiple sources of these recent social media posts".

(collectively referred to as the "Concerns")

[139] The above Concerns cannot be considered as complaints under the *SPC Regulation,* even if the Employer may have used the word "complaint" when describing them. It is the "essential character of the matters raised that is determinative", not how the employer might have characterized them: *Casavant* at para. 55.

[140] The Employer concluded that the communications received by it in relation to the posts made by Mr. Meneray, were insufficient to constitute a complaint that could trigger an investigation. This was not an unreasonable conclusion.

[141] First, the Concerns were not directed at the Petitioner or his actions, nor did they personally affect any of the individuals raising them. Rather, the Concerns focused on the SPCA's image and reputation, and how it was being portrayed to the public as a consequence of Mr. Meneray's posts.

[142] Second, it is clear from a plain reading of the *SPC Regulation* that a complaint must satisfy certain criteria in order for it to trigger an SPC Investigation. Under s. 3, the triggering complaint must be made by a person (the complainant) in writing to the director or supervisor, and include: the full name and address for delivery of the complainant; details of the complaint; description of the incident; and names and addresses of any witnesses, if known. There is no evidence that any communication was received by the Employer that met the requirements for a complaint under s. 3 of the *SPC Regulation*.

[143] Sections 4 and 5 of the *SPC Regulation* provide that upon receipt of a complaint, a supervisor must either attempt to informally resolve the complaint, or investigate it. Those steps are only put into motion if a complaint has been received in the manner proscribed in s. 3.

[144] On this point, in *Rampone v. British Columbia (Housing and Social Development),* 2010 BCSC 1468, Justice Ehrcke dismissed the petition for judicial review, noting at para. 28 that the process set out in the *SPC Regulation* was not engaged because "the investigation of Mr. Rampone's conduct did not stem from a complaint".

[145] It is evident from Mr. Eccles's June 25, 2020 correspondence with Ms. Alexander, that the Employer was alive to the requirements of the *SPC Regulation* for the lodging of a complaint to trigger an SPC Investigation:

> CUPE local 1622 representatives were informed of the duty of the Society to report the incident to Police Services and that there was a possibility that if a complaint was lodged pursuant to the Special Provincial Constable Complaint Regulation, such complaint could be investigated by the Society, and external party or the Ministry itself.

[146] In this case, it was reasonable for the Employer to conclude that no such triggering complaint was ever made in relation to the Petitioner's conduct. Hence, the requirement for an investigation to be conducted using the *SPC Regulation* process did not arise.

[147] I see nothing in the affidavit material referenced by the Petitioner that would cause me to find that it was unreasonable for the Employer to conclude that the Concerns did not rise to the level of complaints that would trigger the process set out in the *SPC Regulation*.

[148] I also reject the notion advanced by the Petitioner that Mr. Eccles should have advised the individuals who raised the Concerns of how to file a written complaint in accordance with the *SPC Regulation*. Mr. Eccles could not be reasonably expected to assume that those communications were intended as complaints within the meaning of the *SPC Regulation*. I agree with the SPCA Respondents that it would be unreasonable to expect any representative of the SPCA to direct every individual expressing a concern to make a formal written complaint, and to convert every concern relating to an SPC's conduct, into a formal complaint requiring mediation or investigation pursuant to the *SPC Regulation*.

[149] It was also reasonable for the Employer to conclude that the formal complaint requirement in s. 3 of the *SPC Regulation* was not a mere technicality. The provision is substantive and consistent with the purpose of the *SPC Regulation*. As suggested by its name, the *SPC Regulation* served a public purpose. By requiring the Employer to follow specific procedures for dealing with complaints against SPCs from members of the public, it ensured transparency and consistency.

[150] The *SPC Regulation* was made under the authority of s. 74 of the *Police Act*. Though the particular subsection is not specified in the Order in Council which introduced the *SPC Regulation*, the most applicable is s. 74(b), which provides the power to make regulations for developing procedures for handling complaints from members of the public against a class of officer.

[151] The requirement of a complaint, and the SPCA Respondents' determination that the *SPC Regulation* did not apply as a result of this requirement, is also consistent with the Minister's Governing Principles and Policies for the Special Provincial Constable Program (the "SPC Principles and Policies"), which was last updated in November 2013. The relevant portion is as follows:

> 6. SUPERVISION, DISCIPLINE AND PUBLIC ACCOUNTABILITY
>
> Principle: Functional supervision and discipline of SPCs will be the responsibility of the employing agency.
>
> Principle: SPCs will be subject to public accountability standards and procedures consistent with the *Police Act* and *Regulations*. Insofar as complaints are made with respect to the conduct of an SPC relating to the exercise of peace officer authority, the public interest will be safeguarded through public oversight.
>
> > Policy: When disciplinary action is taken by an employer in respect to conduct of an employee acting in the capacity of an SPC, or which may impact on the employee's eligibility to hold an SPC appointment, the employer will provide details of the circumstances and outcome of the disciplinary action in a timely report to the Minister.
> >
> > Policy: Employers will recognize that SPCs are subject to the *Special Provincial Constable Complaint Procedure Regulation* and will develop a procedure for dealing with public complaints and designate a person or persons to supervise the SPCs for the purposes of that Regulation. The details of the complaints process and activities relating to it will be included in regular and timely reports to the Minister.
>
> [Emphasis added.]

[152] It is evident from Mr. Eccles's June 25, 2020 letter that the SPCA Respondents initiated an internal investigation into the Petitioner's conduct because they were concerned about his suitability for employment. In the absence of a triggering complaint, it was open to the Employer to conclude that while Mr. Meneray's conduct had no direct impact or bearing on the public, it was worthy of an internal investigation. In so doing, the SPCA exercised its contractual and management rights, and conducted its investigation and discipline in accordance with its contractual rights and duties.

b) Off-Duty Conduct

[153] I also find that it was reasonable for the Employer to conclude that the *Police Act* and *SPC Regulations* do not apply to Mr. Meneray's off-duty conduct, or conduct unrelated to the performance of his duties and responsibilities as an SPC.

[154] First, there is no evidence that Part 11 of the *Police Act* applies to SPC's. Mr. Meneray was not a "member" as defined in s. 76(1), as he did not hold the position of a "municipal constable, deputy chief constable or chief constable of a municipal police department". Further, the use of the word "means" in relation to the definition of "member", indicates that the definition is exhaustive: *Maynes v. British Columbia (Minister of the Environment),* 2009 BCCA 499 at paras. 31–32.

[155] Second, there is no evidence that Part 11 of the *Police Act* has been incorporated into the *SPC Regulation*. Despite the fact that the legislature saw fit to introduce various enactments to incorporate Part 11 of the *Police Act* for other classes of officers, no similar provision exists in the *SPC Regulation*.

[156] In fact, amendments made in November 2021 to the *SPC Regulation* clarify that it is not intended to include off-duty conduct. For example, s. 2(2) of the *Amended SPC Regulation* stipulates that nothing in the regulation "limits or prohibits any disciplinary or other actions that may be taken by the Employer of an employee who is a special provincial constable in respect of conduct that does not involve a constabulary duty of the special provincial constable". Amendments to the complaint procedure in s. 3 clarify that a member of the public may only make a complaint if they are directly affected by or directly witness conduct of the SPC that is alleged to involve either the improper exercise, performance, or neglection of constabulary duty.

[157] These amendments are consistent with the manner in which the *SPC Regulation* has been interpreted by the Court in *Rampone*, which is the only decision that is directly on point to the circumstances of this case.

[158] The *Rampone* case arose after the petitioner, who was employed as an investigator and manager in the Gaming Policy and Enforcement Branch of the Ministry of Housing and Social Development, was terminated from his employment. The termination followed an investigation which concluded that he had "failed to discourage the circulation of inappropriate and offensive emails from employees under his supervision": *Rampone* at para. 1.

[159] In the judicial review proceeding before Justice Ehrcke, Mr. Rampone sought: (1) an order in the nature of *certiorari*, quashing the decision to terminate his employment; (2) a declaration that the investigation was *ultra vires* the Ministry; and (3) a declaration that he continues to be an employee: *Rampone* at para. 2.

[160] Justice Ehrcke summarized the arguments advanced by Mr. Rampone, as follows:

> [12] Mr. Rampone's submission has two components. The first is that because he is a special provincial constable, the provisions of the Public Service Act do not apply to him, and therefore, any dismissal pursuant to the Public Service Act is of no effect. He relies on s. 6(1) of the Police Act, which provides:
>
> 6 (1) The Public Service Act does not apply to the provincial police force, a provincial constable, an auxiliary constable, a special provincial constable, a designated constable or an employee of the provincial police force.
>
> [13] The second component of the petitioner's submission is that as he is a special provincial constable, complaints about his conduct cannot be investigated by any procedure other than that set out in the *SPC Regulation*.

[161] The arguments advanced by Mr. Rampone bear striking similarity to those advanced by Mr. Meneray, with the exception that in this case, the Collective Agreement is implicated rather than the *Public Service Act*.

[162] In dismissing Mr. Rampone's petition, Justice Ehrcke stated as follows:

> [17] I do not find either of the petitioner's arguments persuasive. In my view, both components of his submission fail to distinguish between Mr. Rampone's rights and responsibilities as a special provincial constable and his rights and responsibilities as an employee hired under the Public Service Act.
>
> [18] Mr. Rampone was first hired as a public service employee; his subsequent appointment as a special provincial constable was ancillary to, and solely for the purpose of, carrying out his role as an employee of the

> Gaming Policy and Enforcement Branch. As a special provincial constable, he was entitled to the benefit of the procedures set out in the *SPC Regulation* if a complaint was made in relation to the manner in which he carried out his duties as a special provincial constable, but nothing in the *SPC Regulation* or the Police Act immunized him from another disciplinary process for misconduct as an employee that was unrelated to his carrying out of his special provincial constable duties.
>
> [19] Let me deal first with s. 6(1) of the *Police Act*. Mr. Rampone's position is that if a person is a public service employee who would otherwise be subject to the *Public Service Act*, once he is appointed as a special provincial constable, all aspects of the *Public Service Act* cease to have any application to him, even though he continues to be employed as a public service employee. I do not find that s. 6(1), properly construed, has that effect.
>
> [20] In *Chieu v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3 (CanLII), [2002] 1 S.C.R. 84, Iacobucci J. observed at para. 27:
>
> > This Court has stated on numerous occasions that the preferred approach to statutory interpretation is that set out by E. A. Driedger in *Construction of Statutes* (2nd ed. 1983), at p. 87:
> >
> > Today there is only one principle or approach, namely, the words of an Act are 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 Parliament.
>
> [21] Applying those principles, I would interpret s. 6(1) as meaning that the *Public Service Act* does not apply to decisions made with respect to special provincial constables *in their role as constables*. It cannot reasonably be interpreted to mean that if a person is a public service employee and also happens to be a special provincial constable, then his status as a public service employee ceases to be governed in any way by the *Public Service Act*. Such an interpretation would lead to absurd consequences, which, I am satisfied, were not the intention of the legislature, and are not consistent with the scheme and object of the Act.
>
> …
>
> [25] As to the effect of the *SPC Regulation*, in my view, the procedure set out therein applies to the investigation of complaints made against a person in his or her capacity as a special provincial constable. In the present case, that procedure had no application for two reasons. First, the procedure that led to Mr. Rampone's dismissal was not the investigation of a complaint, and second, it was directed at disciplining him as an employee, not as a special provincial constable.

[163] Similar to Justice Ehrcke's conclusion in *Rampone*, the evidence before me supports a finding that the procedure that led to Mr. Meneray's dismissal was not through the investigation of a complaint. There is ample basis upon which to find that the investigation was directed at disciplining the Petitioner as an employee, rather than specifically as an SPC. Consequently, it was not unreasonable for the

Employer to conclude that the process set out in the *SPC Regulation* was not engaged.

[164] In coming to this conclusion, I reject the Petitioner's argument that he is entitled to the processes and protections under the *Police Act* and *SPC Regulation* for any and all disciplinary procedures against him, regardless of the nature of the alleged misconduct.

[165] The Petitioner grounds this argument in part on what he says is the internal procedure of the SPCA Respondents, and in part on the case authorities.

i. Internal Procedures and Communications

[166] The Petitioner says that direction from the PSD required that complaints be assessed through the lens of s. 77 of the *Police Act*, which includes off-duty conduct when that conduct could amount to discreditable conduct. In support, he points to an August 10, 2017 email from Mr. Eccles sent to multiple SPCA addresses, including the Petitioner. The email attached the *Code* and the *SPC Regulation* and stated:

> [I]n the event that a complaint is received the direction from Police Services is that the Code of Professional Conduct Regulation is to be applied in determining the validity of the complaint.

[167] The *Code* attached to the email contained provisions related to off-duty conduct. However, it was no longer in force.

[168] In a further communication dated December 29, 2017, Mr. Eccles sent an e-mail to multiple SPCA addresses, including the Petitioner. The email again attached the *SPC Regulation* and stated:

> In the event of a complaint against a Special Provincial Constable [the] direction from Police Services is that general principles found in Section 77 of the Police Act would apply to a complaint investigation in order to determine the validity of the complaint.

[169] This PSD guidance is in direct conflict with the SPC Principles and Policies, which specify that the *SPC Regulations* and not the *Police Act*, would apply. It appears that the Employer subsequently came to this same conclusion, as is

reflected in Mr. Eccles's June 2020 letter which also refers to the complaint procedure in the *SPC Regulation* rather than the *Police Act*.

[170] The Petitioner also relies on s. 7 of the Memorandum of Understanding between the Attorney General of British Columbia and the BC SPCA (the "MOU"). That document requires the SPCA to "report immediately to the Attorney General all incidents involving an SPC which may affect the SPC's suitability to hold SPC authority, regardless of whether the incident arises out of the SPC's duties with the Society or not." However, I do not see this provision of the MOU as supporting the Petitioner's position. The requirement to report troublesome off-duty conduct to the Minister, is in keeping with the supervisory role that the Ministry has over the SPCA. The duty to report does not mean that the SPCA is also required to initiate an investigation into that same conduct under the *SPC Regulation*.

[171] Section 8 of the MOU also does not assist the Petitioner. Section 8 stipulates that the SPCA is required to maintain "a process for dealing with complaints from the public concerning the conduct or actions of SPCs", which process is to incorporate a protocol agreement between the SPCA and the Police Commission or other public complaints body identified by the Attorney General.

[172] The Protocol Agreement referred to in s. 8 of the MOU is dated March 1995, and is attached to the MOU as an appendix. It requires the SPCA to "administer" allegations pursuant to Part 9 (Citizen Complaint Procedure) of the *1988 Police Act*. Part 9 of the *1988 Police Act* applied to SPCs pursuant to s. 49, which deemed them to be provincial constables for the application of the Citizen Complaint Procedure. Section 49 defined a "complaint" as "an allegation in writing made by a member of the public respecting the conduct of a ... provincial constable which if proven, would constitute a disciplinary default under a code of conduct established by regulation" – i.e., the Code of Professional Conduct. Sections 52 and 53, however, contemplated a citizen making a complaint to an appropriate person. Such a complaint was to be recorded in writing by that person receiving the complaint and forwarded. Similar provisions remain in s. 78 of the current *Police Act*. However, as noted earlier, the current *Police Act* no longer applies to SPCs.

[173] The Protocol Agreement creates some confusion regarding the disciplinary process for SPC's. It establishes a process for complaints to be resolved informally or investigated by the RCMP. That process is consistent with the *1988 Police Act,* but inconsistent with the *SPC Regulation* that applies to this proceeding, and which creates a separate complaint and investigation procedure for SPC's. The Protocol Agreement does not appear to have been updated to accord with the *SPC Regulation*, or the current *Police Act* disciplinary provisions (which do not apply to SPCs).

[174] However, one must bear in mind the legislative enactments that have been introduced since the Protocol Agreement was put into place, and the rules of statutory interpretation. A harmonious reading of these provisions leads to a reasonable conclusion that the current *Police Act* and the *SPC Regulations* supersede the Protocol Agreement, such that SPC off-duty conduct is not covered.

[175] If the legislature intended for SPC's to be subjected to the same disciplinary procedures as municipal officers, then the legislature would have expressly incorporated the *Police Act* procedures into the *SPC Regulation*, as it has done in relation to other classes of officers, such as special municipal constables. The legislature did not do that, and in fact, provided even clearer language in the *Amended SPC Regulation*, to make explicit its intention that SPC off-duty conduct is not captured by the *SPC Regulation* or the *Police Act*. In my view, it was reasonable for the Employer to conclude that the disciplinary provisions in these enactments did not have application to the circumstances of the Petitioner.

[176] I turn now to considering the authorities relied on by the Petitioner.

ii. Authorities

[177] The Petitioner relies on *Casavant*, *Deighton v. Vancouver Police Board* (1986), [1987] B.C.W.L.D. 278 (S.C.), 1986 CanLII 1216 (B.C.S.C.), and two appeal decisions regarding the same petitioner, Mr. Carpenter – *Carpenter v. Vancouver Police Board and Stewart* (1985), 63 B.C.L.R. 310 (C.A.) at para. 19, 1985 CanLII 477 (B.C.C.A.), and *Carpenter v. Vancouver Police Board* (1986), 9

B.C.L.R. (2d) 99, 1986 CanLII 841 (B.C.C.A.), collectively referred to as (the "*Carpenter Decisions"*).

[178] The *Casavant* case does not assist the Petitioner. Although the Court did consider the effect of the *SPC Regulation*, it did so within the context of an SPC who was being disciplined for on-duty conduct, i.e. his refusal to perform his constabulary duties. That is clearly different from this case, where Mr. Meneray was disciplined for off-duty conduct.

[179] The employer in *Casavant* characterized Mr. Casavant's termination as "unsuitability for employment", and maintained that the employer did not need to conduct disciplinary proceedings in accordance with the *Police Act* and the *SPC Regulation*. The Court of Appeal disagreed, noting that as per *Deighton*, it is the essential character of the matter raised that is determinative of whether it relates to on-duty or off-duty conduct: at paras. 55–56.

[180] While the *Deighton* and *Carpenter Decisions* did involve off-duty conduct, the petitioners in those cases were police officers rather than SPC's, and thus have no application to the case at bar. The petitioner's counsel in *Rampone* also relied on the *Carpenter Decisions* to support its position that the *Police Act* and *SPC Regulation* were applicable to Mr. Rampone's circumstances. Justice Ehrcke noted at para. 11 that those decisions were not of assistance because: (a) they dealt with the dismissal of a Vancouver City police officer rather than a special provincial constable; (b) the version of the *Police Act* considered in the *Carpenter Decisions* was different; and (c) neither of the *Carpenter Decisions* related to the effect of the *SPC Regulation*. Some of those same concerns arise here regarding the limited applicability of *Carpenter* to Mr. Meneray's judicial review.

[181] In the present case, the only case that is directly on point to Mr. Meneray's circumstances, is the *Rampone* decision. That decision supports the position of the SPCA Respondents.

iii. Reasons for Termination

[182] The Termination Letter provided various reasons for the termination, which are excerpted below:

> As a result of all of the above your employment is terminated for the following reasons:
>
> > 1. Your off duty conduct damaged the reputation of your employer by posting in two separate social media platforms your assault of a bicyclist and boasting of your actions while being identified as an employee of the BC SPCA.
> >
> > 2. You were insubordinate when told to take down the Instagram posting, you reposted a similar video on Facebook.
> >
> > 3. You have lost your ability to resume your position as your status as a Special Provincial Constable has been revoked. You have lost your status as a result of your own misconduct and as such the employment relationship has been frustrated.
> >
> > 4. You have breached the trust of the employer by surreptitiously recording the interview as well as the private caucus in which you were not a party to the conversation. This is a violation of the Criminal Code of Canada.
> >
> > 5. You are in a position of trust as a Special Constable and the Employer must have confidence that you will exercise your authority reasonably, with appropriate restraint and that at all times you will act within the limitations of your jurisdiction. You have failed to meet this critical threshold. Through the interviews, we found your responses to be at time contrived, insincere but significantly you lacked insight into your wrongdoing and did not demonstrate genuine remorse.
>
> For all of the above reasons the employment relationship is fractured beyond repair. We have completely lost faith and lost the trust that is required by someone in your position. We ask that you immediately return all property of the BC SPA, in particular your uniforms and all identification, keys and any electronic devices. You will receive your final pay in due course along with your record of employment.

[183] The Employer argues that none of the above-referenced grounds relate to the Petitioner's performance of his duties and responsibilities as an APO or SPC. Those duties required him to enforce the animal cruelty provisions of the *PCAA*, the *Criminal Code* and any other animal cruelty laws.

[184] Mr. Meneray argues that all of his conduct in relation to the Incident, and post Incident events, were in the course of fulfilling his duties as an SPC. For example, the Petitioner says he got into the altercation with the cyclist because he believed the cyclist was mistreating an animal. Further, the Petitioner says he made the Facebook and Instagram Posts in order to locate and apprehend the cyclist whom he believed was mistreating an animal. It is submitted that this behaviour, for which he was disciplined, qualifies as on-duty conduct.

[185] Even if one accepts that the Petitioner got into an altercation with the cyclist because he believed that he was mistreating an animal, it was reasonable for the Employer to conclude that Mr. Meneray was not on-duty or performing his constabulary duties during the Incident. He was not wearing his uniform, he was not in a BC SPCA registered vehicle, and he was not purporting to be acting on behalf of the SPCA when the altercation occurred. Similarly, the fact that Mr. Meneray made the Facebook Post and Instagram Post from his personal accounts rather than the Employer's account, lends support to the conclusion that he was acting outside the scope of his duties.

[186] In my view, there is ample basis to support the contention of the Employer that it was not the Incident itself, but rather other off-duty conduct that was the impetus for the Investigation and the subsequent termination.

[187] The Termination Letter provides clear reasons for the termination. The essential character of the concerns raised in the Termination Letter, and which resulted in Mr. Meneray being disciplined, related to his off-duty conduct. This does not mean that it is not possible to argue that some of the grounds for dismissal raised by the Employer (such as 3 and 5) could be considered to be related to the performance of Mr. Meneray's duties and responsibilities as an APO or SPC. However, simply because these other interpretations are possible, does not make the Employer's decision unreasonable.

5. Conclusion

[188] The Court noted at para. 100 in *Vavilov*, that the burden is on the party challenging the decision to show that it is unreasonable. It went on to hold that:

> [100] …Before a decision can be set aside on this basis, the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision. It would be improper for a reviewing court to overturn an administrative decision simply because its reasoning exhibits a minor misstep. Instead, the court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable.
>
> [101] What makes a decision unreasonable? We find it conceptually useful here to consider two types of fundamental flaws. The first is a failure of rationality internal to the reasoning process. The second arises when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it. There is however, no need for reviewing courts to categorize failures of reasonableness as belonging to one type or the other. Rather, we use these descriptions simply as a convenient way to discuss the types of issues that may show a decision to be unreasonable.

[189] I conclude that the Petitioner has failed to meet its burden to show that the decision of the Employer was unreasonable. Having regard to the record available to the Employer, the authorities relied on by both parties, and the applicable statutory provisions, I conclude that it was reasonable for the Employer to find that the *Police Act* provisions and *SPC Regulations* did not apply to Mr. Meneray's circumstances.

[190] I conclude that the SPCA Respondents reasonably, or even correctly, carried out their internal investigation and dismissal of the Petitioner in accordance with their contractual and management rights under the employment contract and the Collective Agreement.

[191] To the extent that the Petitioner claims that the SPCA Respondents breached their contractual duties, the Petitioner's redress, if any, is through the grievance and arbitration process set out in the Collective Agreement.

[192] Mr. Meneray's petition in relation to the SPCA Respondents is dismissed.

D. Jurisdiction of the Arbitrator/Labour Relations Board

[193] As noted earlier, the standard of correctness applies to the question of jurisdiction of the Arbitrator and Labour Relations Board to address issues flowing from Mr. Meneray's discipline and termination.

[194] Based on my review of the *Police Act* and *SPC Regulations*, which has been addressed elsewhere, I am satisfied that Mr. Meneray was dismissed under the proper procedure, and as such, the Labour Relations Board is the proper forum for him to challenge the disciplinary actions taken by the Employer.

[195] In disciplining and terminating the Petitioner, the SPCA conducted its investigation and discipline in accordance with its contractual duties. Any dispute regarding any alleged breach of those contractual duties, including any breach of the SPCA's policies, falls properly within the ambit of a labour arbitrator.

V. Judicial Review of the Actions of the Minister

[196] The issues that arise in relation to this aspect of the judicial review, are:

a) Did the closure of the SPC appointment constitute a decision, or was it automatic by operation of law?

b) Is the closure of the SPC appointment subject to judicial review?

[197] The parties agree that if the closure was subject to judicial review, then the appropriate standard of review is reasonableness. However, the Minister concedes that if I do find that the closure of the SPC appointment is subject to judicial review, then the decision of the Minister should be declared unreasonable as it constituted a fettering of discretion or improper sub-delegation of the discretion.

[198] I now turn to the relevant facts.

A. Relevant Facts

[199] The following facts are uncontroverted, and taken from the Minister's brief of argument.

[200] As noted elsewhere, the appointment of SPCs in BC is governed by the *Police Act*. Pursuant to s. 9 of the *Police Act*, the appointment of SPCs is a discretionary decision of the Minister. However, the Deputy Minister of Public Safety and Solicitor General is authorized to exercise this authority on behalf of the Minister: Section 23(1) of the *Interpretation Act,* R.S.B.C. 1996, c. 238.

[201] The SPC Principles and Policies provide as follows with respect to the appointment of SPCs:

> 1. GENERAL
>
> Principle: Appointment of Special Provincial Constables (SPCs) in British Columbia is governed by the Police Act, [RSBC 1996] Chapter 367.
>
> Principle: Appointment of SPCs under section 9 of the Police Act is at the discretion of the Attorney General and Minister of Justice.
>
> Principle: SPC appointments will be granted when it is in the public interest to empower individuals to enforce one or more statutes as a peace officer.
>
> Principle: The appointment of SPCs cannot be a class appointment, but must be an individual appointment as in the case of all other peace officer appointments under the Police Act.
>
> Policy: The authority to appoint SPCs is delegated to the Deputy Solicitor General.
>
> Policy: The authority to administer the SPC program, establish standards and recommend appointments is delegated to the Policing and Security Branch, Police Services Division.

[202] An SPC appointed pursuant to s. 9 of the *Police Act* has the powers, duties and immunities of a provincial constable, subject to the restrictions specified in the appointment and regulations.

[203] The duties of an SPC are also defined or restricted by applicable policies and memoranda. For example, the SPC Principles and Policies applies to all SPCs in British Columbia. However, the MOU governs only those SPCs who are also employees of the SPCA.

[204] On February 17, 2014, the Ministry received a letter from the SPCA requesting that Mr. Meneray be appointed as an SPC. The letter enclosed an

application package, which included, *inter alia*, a criminal record check for Mr. Meneray. The application was reviewed and the Deputy Minister appointed Mr. Meneray as an SPC on March 5, 2014. The appointment was for a five-year term expiring on March 31, 2019.

[205] On March 7, 2019, the Ministry received a letter from the SPCA requesting the "renewal" of Mr. Meneray's SPC appointment. This letter also enclosed an application package and criminal record check for Mr. Meneray.

[206] On March 28, 2019, the Deputy Solicitor General, on behalf of the Minister, appointed Mr. Meneray as an SPC for a second five-year term (the “2019 Appointment”). The appointment provided as follows:

> The powers and duties conferred are restricted to the performance of duties by the appointee as an authorized agent of the British Columbia Society for the Prevention of Cruelty to Animals with respect to that Society's lawful mandate. For this purpose, this appointee is empowered to enforce the following enactments to the extent necessary:
>
> a) Prevention of Cruelty to Animals Act.
>
> b) The cruelty to animals provisions of the Criminal Code of Canada.
>
> c) Any other laws relating to the prevention of cruelty to animals.
>
> This appointment is effective on the date signed and expires on the 31st day of March 2024, or on such earlier date as the appointment is revoked, or the appointee ceases to be an Agent of the British Columbia Society for the Prevention of Cruelty to Animals.
>
> [Emphasis added.]

[207] Section 2 of the MOU provides guidance as to the termination of an SPC appointment:

> 2. SPC appointments will terminate where an SPC ceases to hold the position within the Society or its branches for which the appointment was granted. Whenever such circumstances occur, the Society will notify the Attorney General forthwith.

[208] Section 12 of the MOU sets out additional limitations on SPC appointments:

> 12. Every SPC appointment:
>
> a) is an individual peace officer appointment governed by the Act and Regulations;

b) is a limited peace officer appointment and does not authorize the agent to be identified as "police";

c) is limited to the time while the individual is engaged in duties associated with the Society;

d) is subject to rescission and re-appointment from time to time to reflect such other restrictions as the Attorney General may prescribed;

e) may be subject to such other restrictions as the Society may prescribed from time to time.

[209] On June 25, 2020, Ms. Alexander received a letter from Mr. Eccles advising her of an alleged incident involving Mr. Meneray. At the outset of the letter, he advised that he was writing about an incident involving the Petitioner that "may affect his suitability to continue to hold SPC authority". Mr. Eccles concluded his letter by explaining that when an employee is put on paid suspension pending investigation, “we assume no finding of wrongdoing until proven otherwise through the investigation process. This allows us to mitigate any potential additional risk while we gather all of the relevant facts and make a decision as to whether the conduct was culpable or non-culpable and if any remedial action is warranted.”

[210] Ms. Alexander responded to Mr. Eccles via email the same day, as follows:

> Thank you for this information. Given that BC SPCA has suspended Mr. Meneray and that he is no longer performing the duties of his appointment, we have cancelled his appointment.
>
> Can you please confirm you have retrieved the SPC badge that was issued to Mr. Meneray and destroyed his ID card? We will update our records accordingly.

[211] On July 2, 2020, Mr. Meneray sent an e-mail to the Minister, advising, *inter alia*, that he was being "negligently disciplined" by the SPCA and that he was not being afforded any due process under the *Police Act* or associated regulations.

[212] On July 27, 2020, PSD responded to Mr. Meneray's correspondence advising him that his SPC appointment was no longer in effect as he was no longer on duty as an authorized agent of the SPCA. Despite the reference in the letter to the SPCA's duty to report to the Director of Police Services any incident that "may affect the SPC's suitability as an SPC, whether or not the incident arose in the exercise of

the SPC's duties", the unidentified writer concludes that the matter "appears to be an employment matter between you and the BCSPCA."

B. Was the Closure of the SPC Appointment a "Decision"?

[213] The first question is whether the closure of the SPC appointment constituted a decision by the Minister to "revoke" Mr. Meneray's SPC status, or whether the revocation of the SPC status occurred automatically by operation of law.

[214] The Minister argues that the SPC appointment expired pursuant to its own terms, when Mr. Meneray was suspended and ceased being an agent of the SPCA. Consequently, no decision was made by the Minister.

[215] In support, the Minister relies on the 2019 Appointment document, and ss. 2 and 12 of the MOU, Mr. Eccles's own affidavit evidence and the jurisprudence.

[216] The 2019 Appointment document contemplates the ending of Mr. Meneray's SPC appointment, in one of three ways:

1. by expiry of the five-year term;

2. by revocation made prior to the expiry of the appointment; or

3. when he ceases to be an agent of the SPCA.

[217] The Minister relies on the third ground as the basis for the "closure" of Mr. Meneray's appointment as an SPC.

[218] In my view, the first ground can be viewed as automatic. The second ground would occur as a result of a decision made to revoke. The third ground, depending on the circumstances, could be "automatic", or involve the making of a decision. I come to this conclusion bearing in mind the provisions of s. 2 and s. 12(c) of the MOU.

[219] I accept that where an SPC has been terminated from their employment with the SPCA, by virtue of the MOU and 2019 Appointment document, they also cease

to be an agent of the SPCA. In that circumstance, the end of their SPC appointment is automatic.

[220] However, where as in here, an SPC is suspended with pay pending an investigation, it is not necessarily true that they cease to be an agent of the SPCA. The end of their SPC status will depend on whether a temporary suspension pending the outcome of an investigation is found to be equivalent to a termination of employment. To come to that conclusion, some assessment of the circumstances would have to occur.

[221] Despite her characterization of the process as automatic, I find that the cancellation occurred through Ms. Alexander's decision and action.

[222] I disagree with the Minister that the situation is analogous to an automatic suspension of a drivers licence under s. 232 of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318. As noted by the Court in *Gutteridge v. British Columbia (Superintendent of Motor Vehicles),* [2001] BCTC 620, 2001 BCSC 620 (CanLII) at para. 14, s. 232 does not provide the Superintendent the power and discretion to consider the circumstances of the conviction. Rather, the suspension is automatically triggered when a person is convicted of a motor vehicle related offence under the *Criminal Code*.

[223] To conclude that the SPC status should be closed once an SPC has been suspended with pay pending an investigation, involves a ministerial exercise of discretion. It requires a conclusion that a temporary suspension qualifies as a basis for concluding that the SPC has ceased to be an agent.

[224] I agree with the Petitioner that the notion that an employee suspended with pay pending an investigation is no longer an agent of the SPCA, is ludicrous on its face. It assumes that the investigation will find wrongdoing on the part of the employee such that the employee will not return to work. Yet this is contrary to what Mr. Eccles stated in the June 25, 2020 letter to Ms. Alexander.

[225] In his communication, Mr. Eccles informed the Minister about an incident that required investigation. He did not state or imply that the Petitioner was no longer an employee or agent of the SPCA, or that the SPCA was requesting the revocation or cancellation of Mr. Meneray's appointment. Rather, Mr. Eccles emphasized that the suspension was part of a normal procedure invoked by the Employer pending an investigation, and there was no assumption of wrongdoing or culpability.

[226] In his Affidavit #1, Mr. Eccles deposed at para. 29 that he "verily believe[d] that the Petitioner was no longer an authorized agent of the SPCA as of the date of his suspension, as he was relieved of his duties, badge and ID".[7] In my view, this "belief" of Mr. Eccles does nothing to advance the Minister's position. Mr. Eccles was not the person who was authorized to make the decision to cancel or close Mr. Meneray's SPC appointment, and there is no evidence that he was responsible for that decision. In his letter, Mr. Eccles expressed no opinion about the Petitioner's suitability, nor did he make any requests of the Minister.

[227] In my view, the closure of Mr. Meneray's SPC appointment occurred as a result of a decision made by Ms. Alexander that a temporary suspension of an SPC meant that the SPC ceased to be an agent of the SPCA for the purposes of the 2019 Appointment document. The closure in this case was not automatic, as it depended on the interpretation of the phrase "the appointee ceases to be an Agent" – as noted in the 2019 Appointment – and whether it included a temporary suspension pending an investigation, or required an actual termination of employment with the SPCA.

[228] I agree with the Petitioner's assertion that if a suspension of an SPC by their employer results in an automatic cancellation of their SPC appointment, this is a relinquishment of the Minister's decision-making responsibility and authority.

[229] Mr. Eccles alerted the Minister to a potential issue of suitability so that the Minister could exercise his ongoing authority under s. 9 of the *Police Act* to consider suitability of existing, as well as new, SPC appointments. The decision as to whether

[7] Affidavit #1 of Shawn Eccles, made September 10, 2021.

Mr. Meneray's suspension qualified for cancellation of the SPC appointment was discretionary.

[230] I note also that when Ms. Alexander decided to end Mr. Meneray's SPC appointment, she did so without authority. The above policies indicate that the power to grant and revoke an SPC appointment is delegated to the Deputy Solicitor General. Ms. Alexander has no independent or delegated authority to cancel SPC appointments. Ms. Alexander's role in the appointment and revocation process is restricted to making recommendations for appointment or for revocation.

[231] As the Petitioner noted, the affidavit material proffered by the respondents does not disclose any express or implied intention, or any legal authority, to delegate to Police Services Division the authority to suspend, revoke, cancel, or otherwise terminate SPC appointments. Nor does the affidavit material disclose any policies or guidelines for bringing SPC appointments to an end by means other than revocation by the Minister or delegate, or expiry of the term of the appointment specified on the face of the appointment.

[232] When Ms. Alexander decided to close the appointment before the investigation had completed, she foreclosed the Minister's review and consideration of suitability and, by operation of s. 10(2) of the *PCAA*, rendered the Petitioner no longer an agent despite still being a paid employee of the SPCA. Ms. Alexander's decision to end the Petitioner's SPC appointment made it impossible for him to return to work in his APO position regardless of the outcome of the investigation that had only just commenced.

[233] I conclude that the closure of Mr. Meneray's SPC appointment was not triggered automatically by operation of the law. Rather, it occurred through the making of a decision.

C. Availability of Judicial Review

[234] As noted earlier, judicial review is available where the decision is made by a public body and is of a sufficiently public character.

[235] I am satisfied that both these criteria are met in this case. There is no dispute that the Minister is a public body, and that it made the decision to end Mr. Meneray's SPC appointment. The decision was not merely a private contractual matter relating to employment. It involved the exercise of a statutory power, and fits the criteria of being of a sufficiently public character. Consequently, I find that the Minister's decision is subject to judicial review.

D. Remedy

[236] The Minister concedes that if I find that the closure of the SPC appointment is subject to judicial review, then the decision of the Minister should be declared unreasonable as it constituted a fettering of discretion or improper sub-delegation of the discretion. This finding is supported by the facts of this case.

[237] Although the Petitioner originally sought relief under both s. 2(2)(a) and (b), he revised his position at the conclusion of the hearing. The Petitioner now only seeks a remedy under s. 2(2)(a) in relation the Minister's decision.

[238] Pursuant to s. 2(2)(a) of the *JRPA*, I find that the determination that the Petitioner's SPC appointment had expired or otherwise come to an end, is unreasonable, and is set aside.

"Shergill J."