IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Lim v. British Columbia (Police Complaint Commissioner),* 2016 BCSC 406

Date: 20160309
Docket: S143922
Registry: Vancouver

Between:

Jeff Lim

Petitioner

And

The Police Complaint Commissioner of British Columbia

Respondent

Before: The Honourable Mr. Justice Steeves

Reasons for Judgment

Self- Represented Litigant:	Jeff Lim
Counsel for Police Complaint Commissioner:	M. Underhill
Place and Date of Trial/Hearing:	Vancouver, B.C. February 3-4, 2016
Place and Date of Judgment:	Vancouver, B.C. March 9, 2016

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A. INTRODUCTION

[1] The petitioner seeks an order quashing a March 24, 2014 decision of the respondent made under the *Police Act*, R.S.B.C. 1996, c. 367. That decision dismissed the petitioner's complaint against two members of the Vancouver Police Department.

[2] The events giving rise to the respondent's decision were the result of an incident of road rage on October 6, 2012 that became a fight between the petitioner and another man. Two police members attended, they investigated and they concluded there had been a consensual fight. The petitioner filed a complaint with the respondent saying that the report of the two police members who did the investigation contains lies, contradictions and nonsense.

[3] The March 24, 2014 decision of the respondent with regards to the complaint of the petitioner was based on the ground of neglect of duty, inadequate investigation, under s. 77(3)(m)(ii) of the *Police Act*. The complaint was denied. The complaint was also found to be vexatious on the basis that he was attempting to get the police members to change their report.

[4] According to the petitioner the March 24, 2014 decision of the respondent did not consider his main complaint of deceit and lying against the police members who investigated the incident and prepared a report. He raises other issues such as reasonable apprehension of bias, denial of procedural fairness, ignoring relevant factors, inadequacy of reasons and erroneous findings of fact.

[5] The respondent submits that the March 24, 2014 decision of the respondent adequately and properly considered the petitioner's complaint and reached a fair and reasonable decision.

B. BACKGROUND

[6] On October 6, 2012 the petitioner was driving to a large supermarket. He was turning into the parking lot from the street when the car of ahead of him paused and

then stopped. There was an exchange of gestures and swearing between the petitioner and the driver of the other vehicle.

[7] The two vehicles proceeded into the parking lot and the two drivers got out of their vehicles. There is a dispute about what happened next, especially who started what turned out to be a fight in which blows were exchanged. A couple in the parking lot stopped their vehicle and separated the two men. There were more verbal exchanges and then the two men proceeded into the store where there was another altercation.

[8] Someone called the police. Two members of the Vancouver Police Department arrived and interviewed the petitioner, the other male, the couple and an employee of the store. The resulting police report concluded there had been a consensual fight. The petitioner takes considerable exception to this report and says it is full of lies, contradictions and nonsense. The report is discussed below.

[9] On August 13, 2013 the petitioner made a 15-page complaint to the respondent about the report of the two police members who investigated the incident in the parking lot. According to the complaint, the members "lied numerous times in my incident report" and, "more importantly", the petitioner made his complaint because the police members "… have unethically ignored, three times, my polite requests asking them to rewrite their grossly dishonest report." The petitioner has taken to describing the other person in the fight as the "cunning man" and the couple who intervened as "the deceived couple."

[10] The respondent sent a Notification of Admissibility to the petitioner on September 12, 2013, pursuant to s. 83(2) of the *Police Act.* The notice stated that the petitioner's complaint, if substantiated, would constitute conduct "potentially defined as Neglect of Duty, Inadequate Investigation", pursuant to s. 77(3)(m)(ii) of the *Act*. The complaint was referred to the Chief Constable to process under Division 3 of the *Act*. The notice also stated that the investigation was not confined to the issue identified, neglect of duty, and it was open to the investigators to consider other grounds.

[11] An investigation took place during which the petitioner had conversations with the staff of the respondent.

C. DECISION OF MARCH 24, 2014

[12] In a decision dated March 24, 2014 the respondent provided its decision and reasons for discontinuing the investigation under s. 109(2) of the *Police Act.* With respect to the Neglect of Duty issue identified in the Notification of Admissibility of September 12, 2013 the petitioner's complaint was denied.

[13] The decision said as follows:

> Based on Mr. Lim's complaint, the Office of the Police Complaint Commissioner (OPCC) forwarded a Notification of Admissibility of Complaint to the Vancouver Police Department Professional Standards Section on September 12, 2013, with a single allegation of Neglect of Duty pursuant to section 77(3)(m)(ii) of the *Police Act* for Inadequate Investigation. The file was assigned to Sergeant Cam Lawson and subsequently to Constable Jason Perry.
>
> On March 6, 2014, Constable Perry forwarded a 'Request to Discontinue Investigation' to the OPCC. Constable Perry stated in his request that further investigative steps are neither necessary nor reasonably practicable. Secondly, Constable Perry states that Mr. Lim's complaint can be characterised as 'vexatious'.
>
> …
>
> Regarding the adequacy of the investigation conducted by Constables Gravengard and Parmar, they were able to gather evidence from Mr. Lim, the second male involved in the confrontation, a store employee, and the couple who wished to be unidentified. It appears as though Constables Gravengard and Parmar felt that they had sufficient evidence from the witnesses on which to base their assessment of the facts, that being that Mr. Lim and the second male had entered into a consensual fight.
>
> Police officers in British Columbia are afforded considerable discretion in terms whether an investigation should be initiated, as well as the manner in which an investigation is conducted, or whether charges are forwarded to Crown Counsel. Constables Gravengard and Parmar were entitled to exercise their discretion based on their review of the available evidence. Therefore, in reviewing the exercise of discretion related to investigations generally, a significant degree of deference is afforded to police officers and their investigative determinations. Their assessment of the facts was consistent with state of the evidence gathered during their investigation.
>
> Having reviewed the evidence gathered in this *Police Act* investigation, and based on an objective view of the reasonableness of the officers' actions in conducting the initial investigation, there does not appear to be substantive

> evidence for a finding of Neglect of Duty for Inadequate Investigation pursuant to section 77(3)(m)(ii) of the *Police Act.*

[14] As described in the excerpt above, an issue as to whether the petitioner's complaint was vexatious arose during the investigation. The report cited a number of passages from the petitioner's complaint including the following:

> Then, when I read the report for the first time about seven months later, I was shocked to see that the report was much worse than I thought. It contained only the cunning man and the deceived couple's grossly dishonest story, confirmed by the officers' numerous lies, and left out my story completely. So I e-mailed the officers for a third time, asking them to rewrite the grossly dishonest report, while generously assuring them that I would not file a complaint about their own numerous lies if they complied (I have enclosed this e-mail for your review).

[15] The report concluded that the complaint was vexatious:

> In order for a complaint to be considered vexatious, there must be evidence that the complaint was made for an improper purpose, an ulterior or oblique motive, and the whole context of the complaint must be considered.
>
> …
>
> Constable Perry contends that Mr. Lim's message had been that either the members complied with his requests or he would file a complaint against them. He states that Mr. Lim's complaint is an abuse of process explicitly meant to achieve an improper purpose, the changing of a police report to his satisfaction.
>
> Based on the evidence, and having regard to all the circumstances, it is my opinion that this complaint has been made by Mr. Lim for an oblique motive, that being to pressure the Vancouver Police Department to revise their official reports related to the incident. This complaint, therefore, can be considered vexatious.
>
> Therefore, having regard to all the circumstances, including the information obtained after this matter was determined admissible, I have determined that further investigative steps are neither necessary nor reasonably practicable, and that the complaint made by Mr. Lim appears to be vexatious. I am directing that the investigation into this matter be discontinued pursuant to section 109(1)(a) of the *Police Act and* that no further action is required.

D. ANALYSIS

[16] The following issues arise in this review of the respondent's decision of March 24, 2014:

(a) What is the statutory framework for the respondent?

(b) Was the investigation into the petitioner's complaint procedurally unfair and, in particular, was there a reasonable apprehension of bias?

(c) Was the respondent's decision of March 24, 2014 unreasonable?

(d) Did the respondent lack jurisdiction or exceed its jurisdiction when it made the decision of March 24, 2014?

(a) Statutory scheme of the respondent

[17] The respondent is defined as a police force in British Columbia and it is thereby governed by the *Police Act* (s. 1.1). Section 76(1) defines "member" to mean a municipal constable, deputy chief constable or chief constable of a municipal police department.

[18] I will set out the other provisions of the *Police Act* that are relevant to the issues in this case.

[19] Section 77 sets out the meaning of misconduct:

> **Defining misconduct**
>
> **77** (1) In this Part, **"misconduct"** means
>
> (a) conduct that constitutes a public trust offence described in subsection (2), or
>
> (b) conduct that constitutes
>
> (i) an offence under section 86 or 106, or
>
> (ii) a disciplinary breach of public trust described in subsection (3) of this section.
>
> (2) A public trust offence is an offence under an enactment of Canada, or of any province or territory in Canada, a conviction in respect of which does or would likely
>
> (a) render a member unfit to perform her or his duties as a member, or
>
> (b) discredit the reputation of the municipal police department with which the member is employed.
>
> (3) Subject to subsection (4), any of the conduct described in the following paragraphs constitutes a disciplinary breach of public trust, when committed by a member:
>
> …

> (f) "deceit", which is any of the following:
>
> (i) in the capacity of a member, making or procuring the making of
>
> (A) any oral or written statement, or
>
> (B) any entry in an official document or record,
>
> that, to the member's knowledge, is false or misleading;
>
> (ii) doing any of the following with an intent to deceive any person:
>
> (A) destroying, mutilating or concealing all or any part of an official record;
>
> (B) altering or erasing, or adding to, any entry in an official record;
>
> (iii) attempting to do any of the things described in subparagraph (i) or (ii);
>
> …
>
> (m) "neglect of duty", which is neglecting, without good or sufficient cause, to do any of the following:
>
> (i) properly account for money or property received in one's capacity as a member;
>
> (ii) promptly and diligently do anything that it is one's duty as a member to do;
>
> (iii) promptly and diligently obey a lawful order of a supervisor.
>
> …

[20] As something of a preliminary matter the respondent is required to decide whether a complaint is admissible under s. 82. In the subject case the petitioner's complaint was considered admissible and this was communicated to him on September 12, 2013, as set out above. Section 82 is as follows:

> **Determination of whether complaint is admissible**
>
> **82** (1) On receiving a complaint directly from a complainant or receiving a copy or record of a complaint from a member or designated individual referred to in section 78 (2) (b), the police complaint commissioner must determine whether the complaint is admissible or inadmissible under this Division.
>
> (2) A complaint or a part of a complaint is admissible under this Division if
>
> (a) the conduct alleged would, if substantiated, constitute misconduct by the member,

> (b) the complaint is made within the time allowed under section 79 (1) or (2), and
>
> (c) the complaint is not frivolous or vexatious.
>
> (3) A complaint or a part of a complaint is inadmissible under this Division insofar as it relates to any of the following:
>
> (a) the general direction and management or operation of a municipal police department;
>
> (b) the inadequacy or inappropriateness of any of the following in respect of a municipal police department:
>
> (i) its staffing or resource allocation;
>
> (ii) its training programs or resources;
>
> (iii) its standing orders or policies;
>
> (iv) its ability to respond to requests for assistance;
>
> (v) its internal procedures.
>
> (4) A complaint concerning a person who, at the time of the conduct alleged, was a member is not inadmissible by reason only that the person
>
> (a) is, at the time the complaint is made, no longer a member, or
>
> (b) retires or resigns from the municipal police department at any time after the complaint is made.
>
> (5) Nothing in this section limits the application of section 109.
>
> (6) Any complaint or part of a complaint that is determined inadmissible under subsection (3) must be processed by the board of the municipal police department concerned under Division 5.

[21] The March 24, 2014 decision of the respondent to discontinue the investigation into the petitioner's complaint, to effectively dismiss it, was made under s. 109(1) of the *Police Act*:

> **Power to discontinue investigation**
>
> 109 (1) Despite any other provision of this Act, the police complaint commissioner may direct that an investigation under this Division be discontinued if,
>
> (a) having regard to all the circumstances, the police complaint commissioner considers that further investigation is neither necessary nor reasonably practicable, or
>
> (b) in the case of an investigation initiated under an admissible complaint,
>
> (i) the police complaint commissioner is satisfied, as a result of information obtained after the complaint was determined to be admissible, that the complaint is frivolous or vexatious, or

> (ii) the police complaint commissioner considers that the complaint was made with the knowledge that it was false or misleading.
>
> (2) If a direction is made under subsection (1) in relation to a complaint, the police complaint commissioner must notify the following persons of the direction and the reasons for it:
>
> (a) the complainant;
>
> (b) the member or former member whose conduct was the subject of the complaint;
>
> (c) a chief constable of the municipal police department with which that member is employed or, in the case of a former member, a chief constable of the municipal police department with which the former member was employed at the time of the conduct of concern;
>
> (d) if the complaint concerned a chief constable or former chief constable of a municipal police department, the board of that municipal police department.

[22] The investigation was discontinued both because the commissioner considered that further investigation was neither necessary nor reasonably practicable (s. 109(1)(a)) and because the commissioner was satisfied that the complaint was frivolous or vexatious (s. 109(1)(b)(i)).

[23] Section 111 sets out the procedure if the respondent finds that a police officer has committed an offence under any enactment. That was not the finding in this case.

[24] I will next turn to the issues raised by the petitioner in his challenge of the March 24, 2014 decision of the respondent. There is considerable overlap in the issues raised by the petitioner and some of them are difficult to understand. For these reasons I have grouped the concerns of the petitioner as a way of dealing with them effectively.

(b) Procedural unfairness, including bias

[25] The petitioner raises a number of sub-issues to challenge the March 24, 2014 decision of the respondent. These include bias, fairness, lack of jurisdiction, use of irrelevant evidence, inadequacy of reasons and erroneous findings of fact.

[26] The petitioner says there was a reasonable apprehension of bias when the respondent refused to admit his complaint of deceit misconduct. As a matter of bias I do not agree with the petitioner: there is no evidence that the respondent, consciously or unconsciously, would decide his complaint unfairly (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at para. 46; *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25, at para. 20). I will return to the issue of deceit misconduct below.

[27] The petitioner is very concerned that the respondent provided a copy of his original complaint to the two police members and they colluded in their evidence to the respondent. However, there is no evidence of collusion. Further, it would be an unfair process if the respondent did not give the two members an opportunity to respond to the complaint. Giving the members a summary of the complaint, rather than the entire document, was an option available to the respondent. And it may be preferable for complainants to be advised that their complaint or a summary of it will be provided to the member(s). However, these are not issues that give rise to any reviewable error by the respondent.

[28] The petitioner also raises s. 88 of the *Police Act* with respect to the respondent providing the police members with a copy of his complaint. That provision is:

> **Duty to preserve evidence relating to complaint or report**
>
> 88 (1) A chief constable
>
> (a) must take every reasonable step to ensure that members of her or his municipal police department, on becoming aware of
>
> (i) a death or the suffering of serious harm or a reportable injury described in section 89 (1), or
>
> (ii) a complaint or report concerning the conduct of a member or former member,
>
> take any lawful measures that appear to them to be necessary or expedient for the purposes of obtaining and preserving evidence relating to the matter, and
>
> (b) may postpone notifying the member or former member whose conduct is the subject of the complaint or report until those measures are taken.

> (2) Subsection (1) applies whether or not a determination has been made under section 82 about the admissibility of the complaint under this Division.

[29] According to the petitioner s. 88 says that the respondent cannot provide a copy of his complaint to the police members. With respect, that provision is directed at the preservation of evidence relating to a complaint and it cannot reasonably be interpreted to mandate the withholding of a complaint from police members.

[30] I am unable to find an issue of unfairness as that term is used in administrative law or any bias or apprehension of bias as alleged by the petitioner.

[31] According to the petitioner a further reasonable apprehension of bias occurred when the respondent discontinued his complaint because it found that the petitioner was pressuring the police members to rewrite their report. In fact the respondent found that the petitioner's complaint was vexatious for this reason. I was not given any legal authorities or policy on this point but, for obvious reasons, a police report should remain in its original form except perhaps in extraordinary circumstances. If a police report was a dynamic document, always changing, it could well lead to abuse of police investigation processes. Similarly, I gather that addendums are sometimes used although, again understandably, they are not frequently used.

[32] The respondent decided that the petitioner's complaint was vexatious because it was made for an improper purpose, an ulterior or oblique motive. The whole context of the complaint was considered. In this case there was clear evidence of an ulterior motive: the petitioner asked in writing that the disputed police report be changed. For example, in his complaint of August 13, 2013 the petitioner stated:

> … I e-mailed the officers for a third time, asking them to rewrite the grossly dishonest report, while generously assuring them that I would not file a complaint about their numerous lies if they complied …

[33] In his written submissions the petitioner has not said what the report should have said. During oral argument he similarly refused to say what was wrong with the

report and what it should have said. For reasons that are not at all clear he seems to take objection to the description in the report of the altercation at the supermarket as being a "consensual fight." However he also said in his August 13, 2013 complaint to the respondent that he is "ashamed of and [I] deeply regret having engaged in a road rage incident". He also admits to telling the other man that he was "dead" if he did not stop swearing and poking him in the chest and to kicking at the other man's head. In sum, the petitioner's objection to the report is not clear.

[34] In any event, I can find no issue of bias or apprehension of bias here.

[35] The petitioner also takes objection to the fact of calls from investigating members as well as the questions they asked. It is obvious that investigations had to be made following the petitioner's complaint and the fact that the questions were uncomfortable for the petitioner does not raise any issue of apprehension of bias or other issues of fairness. By filing a complaint, the petitioner has to be taken to have agreed to engage in some process of inquiry into his complaint.

[36] With respect to procedural fairness, the petitioner's concern is that his complaint of deceit was not considered. I address that below.

[37] The petitioner says that there is a jurisdictional error in the March 24, 2014 decision because the respondent exceeded its jurisdiction "by reinvestigating the [i]ncident for its own sake." Part of this submission is that the respondent's investigation and decision was based on "Neglect of Duty, Inadequate Investigation" but only "Neglect of Duty" is set out as a ground in the *Police Act*. That is a correct description of the *Act*. However, I conclude that the respondent is entitled to add a specific sub-issue to its investigation as long as it is consistent with the broader issue described in the *Act*. As "neglect of duty" under s. 77(3)(m)(ii) is defined as neglecting, without good or sufficient cause, to "promptly and diligently do anything that it is one's duty as a member to do", it is entirely proper to identify what exactly the members had a duty to do. In this case, their duty was to conduct an adequate investigation.

[38] Other issues raised by the petitioner relate to his unclear challenge to the police's conclusion that there was a consensual fight on October 6, 2012. The petitioner says that the complaint was about police misconduct, not about the road rage incident, and therefore the respondent erred by dismissing the claim partly because the members' conclusion that the incident was a consensual fight was reasonable. But the members' conclusion about the incident was clearly put in issue by the petitioner. As I understand the petitioner's submission, I am unable to find a jurisdictional error.

[39] The petitioner's submission on irrelevant factors relates primarily to his concern that his deceit complaint was not considered by the respondent. I address that below. As well, I am unable to find any error related to inadequacy of reasons and findings of fact.

[40] Overall, I am unable to find that the respondent acted unfairly, nor under an apprehension of bias, with respect to the investigation into neglect of duty and the resulting report of March 24, 2014.

(c) Reasonableness

[41] The parties are agreed that the standard of review in this case is one of reasonableness. A leading case has described reasonableness in the following terms (*Dunsmuir v. New Brunswick*, 2008 SCC 9):

> 47. Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[42] As described in the September 12, 2013 Notification of Admissibility, the issue identified by the respondent to be considered was "potentially defined" as neglect of duty, inadequate investigation, pursuant to s. 77(3)(m)(ii) of the *Act*. In its report of March 24, 2014 the respondent denied the petitioner's complaint on that issue following an investigation.

[43] Above I have concluded that there was no apprehension of bias with respect to the respondent's decision or its conclusion that the complaint of neglect of duty was vexatious. I also conclude that decision was made on the basis of facts reasonably drawn and on a reasonable interpretation and application of the *Police Act.*

[44] Applying the decision in *Dunsmuir* I conclude that the respondent's decision of March 24, 2014 on the issues of neglect of duty and vexatiousness was a reasonable one. The evidence reviewed included information obtained from the petitioner, the two police members, the couple who intervened in the parking lot and an employee in the supermarket. The findings of fact underlying the conclusion were reasonably made, the result was within a range of the possible and reasonable conclusions and the decision can be accurately characterized as transparent and intelligible.

[45] The difficulty here is that the respondent's decision was defined by the Notification of Admissibility and the decision was made on a different ground than the primary one identified in the petitioner's complaint. There is little doubt, and indeed little dispute, that the petitioner's complaint is properly characterized as one of deceit misconduct pursuant to s. 77(3)(f) of the *Act*. While the complaint does not use the specific word "deceit" it is replete with words with the same meaning including at page 1, for example, the allegation that the two police members were "knowingly and intentionally lying." There is also the comment in the above excerpt about re-writing the police report that the police members were "grossly dishonest."

[46] The respondent does not specifically deny that the complaint was one of deceit but it relies on the following statement in the Notification of Admissibility:

> Please be advised that the investigation is not confined to the described disciplinary default. Pursuant to section 108 of the *Police Act,* if the investigation reveals information regarding conduct that is not the subject of the investigation and the conduct, if substantiated, would constitute misconduct as defined by the *Police Act*, the investigator must inform the Office of the Police Complaint Commissioner and the Chief Constable of the relevant municipal police department.

[47] That statement is a reasonable one in the sense that it gives notice that other issues may arise as the investigation unfolds. It may be that an investigation by the respondent will uncover other issues not raised in a formal complaint. In serious matters of misconduct they must be addressed and notice given. It is not in the evidence but presumably the police members who are the subject of the complaint are given the same notice. In either case notice is a matter of obvious fairness. A related matter is that it may be the case that the member making the admissibility decision sees a different issue, perhaps one that is stronger than the one identified in the complaint. Assuming notice has been given to all parties this is not objectionable. But while the investigation is not confined to the original complaint, it should address the original complaint.

[48] Again the respondent relies on the above paragraph in the Notification of Admissibility. However the respondent did not change the grounds of the complaint from neglect of duty to deceit misconduct. It changed the complaint from deceit to one of neglect of duty. Nor did it include the issue of deceit in its March 24, 2014 report along with the issue of neglect of duty. The result is that, having reserved the discretion to consider conduct that was not the grounds of the original complaint, the respondent did not consider or reach a decision on the original complaint. I accept that the petitioner had notice of the change to neglect of duty. But there was no decision telling him that the respondent was not going to proceed with the deceit complaint and with reasons for not doing so. He was entitled to rely on the above excerpt from the Notification of Admissibility that it was still open for the respondent to consider deceit.

[49] In general, the complaint system is established to consider complaints from the public and they are entitled to consideration of their complaints including a fair

process and a reasonable decision. To recast the complaint in different grounds than those raised by the complainant (with notice) is one thing. However, to not give any consideration to the original ground of the complaint is a concern. In my view, a reasonable or fair decision-making process is not one where the original complaint has not been addressed in some way. Put very simply, there must be a decision of some kind on the original complaint; here there was none.

[50] I conclude that the respondent acted unreasonably when it did not consider and provide a decision on the issue of deceit under s. 77(3)(f) of the *Act*. That issue is referred back to the respondent for a decision. I make no comment on the merits of that issue. Any issue as to whether the original complaint was vexatious will also have to be considered within the context of that complaint.

E. SUMMARY

[51] The respondent's decision of March 24, 2014 that that there was no neglect of duty under s. 77(3)(m) of the *Act* was a reasonable one. It was also made reasonably without any apprehension of bias, there was no administrative unfairness, there were no jurisdictional errors and the reasons (including findings of fact) were adequate. Further, the decision that the complaint was vexatious was also reasonable.

[52] The petitioner's application to set aside the March 24, 2014 decision with respect to the issue of neglect of duty is dismissed.

[53] The respondent did act unreasonably when it did not consider or otherwise give a reasoned response to the original ground of deceit raised in the petitioner's complaint. The respondent had reserved to itself the right to change the ground from the one identified in the Notification of Admissibility. Significantly, it did not do so for the purposes of addressing the primary ground raised by the petitioner in his complaint.

[54] The issue of whether there was deceit under s. 77(3)(f) of the *Act* is referred back to the respondent for a decision.

[55] Neither party is entitled to costs against the other.

"Steeves J."