Vehicle Sales Authority
of British Columbia

Investigation File #17-01-002
Hearing File #17-04-001

Neutral Citation 2017-BCRMD-007

IN THE MATTER OF THE *MOTOR DEALER ACT* R.S.B.C. 1996, C. 316 AND THE *BUSINESS PRACTICES AND CONSUMER PROTECTION ACT* S.B.C. 2004, C. 2

BEVERLY BARCLAY

Complainant

And

VEHICLE SALES AUTHORITY OF BRITISH COLUMBIA

Complainant

And

PIONEER GARAGE LIMITED DBA AS FRASER VALLEY PRE-OWNED
(Dealer Registration #40190)

Respondent Dealer

And

DAMIAN SMART
(Salesperson Licence #109080)

Respondent Salesperson

DECISION OF THE REGISTRAR OF MOTOR DEALERS ON PIONEER GARAGE LIMITED'S APPLICATION TO DISMISS

By way of written submissions:

The Authority	February 21 and March 9, 2018
Pioneer	February 28 and March 13, 2018
Ms. Barclay	February 9 and March 12, 2018
Mr. Smart	None

Introduction

[1] Pioneer Garage Ltd. dba Fraser Valley Pre-owned, Dealer # 40190 ("Pioneer") applies to have this case adjourned generally, until an independent review of the Registrar's internal administrative process is complete and assurances are obtained that the Registrar and Authority staff do not share information between them inappropriately. Pioneer further states that, if inappropriate

communications are found to have occurred, this claim against Pioneer should be dismissed. In either case, Pioneer submits that it should be at liberty to apply to register other motor dealers and deal with the Authority in the normal course of business.

[2] The basis of this application is an email of February 8, 2018, from legal counsel for the Authority, whereby he advised me and the parties that the Authority provided him with records, which were covered by deliberative privilege, as part of an ordered disclosure of records.

Procedural History

[3] The first and - so far - only day of hearing in this case was October 12, 2017. At the end of that hearing, the complainant, Ms. Barclay, was in the middle of being cross-examined. I ordered Ms. Barclay not to discuss her evidence with anyone.

[4] After my order, Ms. Barclay communicated with the staff at the Authority that she had additional evidence she wanted to submit. This included communications with my legal administrative assistant. All parties were advised of these communications. Pioneer then applied to have this case dismissed, because of those communications. On January 18, 2018, I denied Pioneer's application to dismiss this case. After my denial, I issued an order requiring the Authority to disclose all notes and communications between the Authority and Ms. Barclay to Pioneer and Mr. Smart.

[5] As part of the ordered disclosure process, records were provided to legal counsel for the Authority to review for solicitor-client and litigation privilege, prior to disclosure. On February 8, 2018, the Authority's legal counsel advised the parties and me that, in the disclosures he had received, there were records, which are covered by deliberative privilege. Deliberative privilege covers notes, draft decisions, or other records and communications, which tend to show the deliberations of an adjudicator. Deliberative privilege belongs to the adjudicator and no party may waive that privilege.

[6] On February 9, 2018, I sent a letter of direction to the Authority's lawyer and the parties. I ordered the lawyer for the Authority to return the disclosed records to me and to destroy any copies of those records. I also, effectively, placed this case on hold and invited all parties to make written submissions regarding this development and the appropriate course of action. That process ended on March 14, 2018; and I have received written submissions from all parties except Mr. Smart.

Position of the Parties

I. Pioneer

[7] Paragraph 1 above sets out Pioneer's requested orders. The basis of that request can be summarized as follows:

(1) The barrier that should exist, between investigative and deliberative records at the Authority, appears not to be in place, because an employee of the Authority seems to have had access to both investigation records and deliberative privilege records, which were then placed on a thumb drive and given to the Authority's lawyer.

(2) Without such a barrier, any employee, who is a witness at a hearing, can inform themselves of the Registrar's deliberative process. This would be unfair to any party appearing before the Registrar.

(3) In further submissions, Pioneer takes the position that any future new hearing on this case, before a different adjudicator, would also be unfair. It would be unfair, because in order for records to be disclosed in the future the Authority would need to remove records covered by deliberative privilege from that disclosure. Doing so would taint the process again, by providing the Authority an advantage.

II. The Authority

[8] The Authority's position can be summarized as follows:

(1) The Registrar should order that the hearing of this case start afresh, before a Deputy Registrar, and that the parties be at liberty to use the transcripts from the past hearing in the new hearing. This will balance providing fairness, while also promoting and preserving the public interest.

(2) The appearance of unfairness is based on the actual disclosure of documents, subject to deliberative privilege, not some potential future disclosure or the mere fact that a centralized computer system may be used by the Authority. An independent review of the VSA's record management system to ensure no improprieties is purely a speculative request and should be denied.

(3) No appearance of unfairness or bias can arise, because the Registrar shares physical space and facilities with his delegates.

(4) The potential insights that the lawyer for the Authority has obtained, due to the disclosure of records covered by deliberative privilege, do not automatically flow into other future adjudicators.

III. Ms. Barclay

[9] Ms. Barclay was initially of the view that no apprehension of bias existed, due to the disclosure of records covered by deliberative privilege. However, in her submission of March 12, 2018, Ms. Barclay agrees with the Authority that "we should start afresh with a Deputy Registrar." Ms. Barclay also asks for an explanation of a passage from my decision in this matter dated January 18, 2018. Ms. Barclay directs that question to the lawyer for Pioneer.

Discussion

I. Office of The Registrar

A. The Registrar's legislative powers and duties

[10] Except for aspects of the Motor Dealer Customer Compensation Fund, the Registrar is responsible for the administration of the legislative scheme anchored by the *Motor Dealer Act*, RSBC 1996 c. 316 (the "MDA"). To that end, the MDA legislative scheme empowers or directs the Registrar to, among other things:

(a) Register and license persons regulated under the MDA scheme;

(b) Receive complaints regarding regulated persons;

(c) Investigate complaints;

(d) Inspect registrants and licensees;

(e) Adjudicate the appropriateness of an applicant, registrant, or licensee to receive or continue to hold a registration or a licence;

(f) Adjudicate consumer complaints;

(g) Issue consumer's remedies for losses or damages that they have suffered while interacting with a registrant or licensee;

(h) Determine appropriate compliance and enforcement measures, such as ordering a registrant or licensee to pay administrative penalties, add conditions to a licence or registration, and making a compliance order on appropriate terms; and

(i) Hold public inquiries, conduct research, publish studies, and generally inform industry and consumers on any aspect of the MDA.

[11] In administering the MDA legislative scheme, the Registrar has been prescribed the administration of certain provisions of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 (the "BPCPA") and powers, such as

creating Registrar's Rules, under certain provisions of the *Administrative Tribunals Act* S.B.C. 2004, c. 45.

[12] With these statutory responsibilities, the Registrar necessarily creates underlying policies and sets priorities for the administration of the MDA legislative scheme.

B. Authorized Registrars

[13] The Registrar cannot accomplish the administration of the MDA legislative scheme on his or her own. As such, the Registrar may authorize any person to act as the Registrar in whole or in part: definition of "Registrar" in section 1(1) of the MDA. When a person is so authorized, they are acting as the Registrar. For instance, compliance officers are authorized to exercise the legislative investigation and inspection powers of the Registrar. When they are investigating or inspecting, the MDA legislative scheme says they are doing so as the Registrar.

[14] As noted, the Registrar retains the responsibility to oversee the administration of the MDA legislative scheme. To that end, whatever a compliance officer knows from his or her investigation or inspection, the Registrar must know.

C. All persons under one roof

[15] Administrative bodies may place under one roof the various roles needed to carry out their duties. This provides for administrative efficiency. Further, the overlapping of functions, which may attract concerns of bias or of a lack of fairness, may be set aside by legislative direction:

> 41 The respondent makes no similar allegations in the present case. Its concern hinges solely on the fact that the Branch's hearing officers were employed by the same authority as its prosecuting officers. However, as Gonthier J. cautioned in *Régie*, "a plurality of functions in a single administrative agency is not necessarily problematic" (para. 47). The overlapping of investigative, prosecutorial and adjudicative functions in a single agency is frequently necessary for a tribunal to effectively perform its intended role: *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, 1992 CanLII 84 (SCC), [1992] 1 S.C.R. 623. Without deciding the issue, I would note that such flexibility may be appropriate in a licensing scheme involving purely economic interests.
>
> 42 Further, absent constitutional constraints, it is always open to the legislature to authorize an overlapping of functions that would otherwise contravene the rule against bias. Gonthier J. alluded to this

possibility in *Régie*, at para. 47, quoting from the opinion of L'Heureux-Dubé J. in *Brosseau*, *supra*, at pp. 309-10:

> As with most principles, there are exceptions. One exception to the "*nemo judex*" principle is where the overlap of functions which occurs has been authorized by statute, assuming the constitutionality of the statute is not in issue.
>
> . . .
>
> In some cases, the legislator will determine that it is desirable, in achieving the ends of the statute, to allow for an overlap of functions which in normal judicial proceedings would be kept separate. . . . If a certain degree of overlapping of functions is authorized by statute, then, to the extent that it is authorized, it will not generally be subject to the doctrine of "reasonable apprehension of bias" per se.
>
> 43 Thus, even assuming the plurality of functions performed by senior inspectors would otherwise offend the rule against bias, it may well be that this structure was authorized by the Act at the relevant time.

- *Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch*), [2001] 2 S.C.R. 781, 2001 SCC 52 (CanLII) (Supreme Court of Canada). [Underlining added.]

[16] The MDA legislative scheme requires that the Registrar carry out all functions and authorizes the overlap of those functions. The mere fact that the Registrar, his delegates, and support staff are under one-roof and share resources does not give rise to bias or unfairness. Further, internal processes may allow the sharing of information to a degree, including a process to ensure consistency in decision making, so long as the decision maker remains independent to decide a case as he or she sees fit: *IWA v. Consolidated-Bathurst Packaging Ltd.*, [1990] 1 SCR 282, 1990 CanLII 132 (SCC); *Tremblay v. Quebec (Commissions des affairs sociales)*, [1992] 1 S.C.R. 952, 992 CanLII 1135 (SCC), and see *Sutherland v. British Columbia (Superintendent of Motor Vehicles)*, 2018 BCCA 65 (CanLII).

II. Administrative Independence

[17] It is important to remember that what occurred here was that counsel for the Authority had advised that he came into possession of records covered by deliberative privilege. There is nothing to suggest that the Registrar's independence to decide a case has been impugned. Part of the Registrar's independence is control over his administrative process: *Canadian Pacific Ltd. v. Matsqui Indian Band*, [1995] 1 S.C.R. 3, 1995 CanLII 145 (Supreme Court of Canada).

[18] Pioneer, essentially, argues that the disclosure of the records, which are covered by deliberative privilege, constitutes a breach in the presumption of regularity. As such, Pioneer argues that it now falls to the Registrar, through an independent review, to show that there has not been a breach of procedural fairness in this and other cases. Pioneer relies on the Supreme Court of Canada decision in *Tremblay* to say that the Registrar's process may be reviewed. The Authority says that extending the breach that has been shown in this case to be a foundation for an independent review is speculative.

[19] The Supreme Court of Canada's decision in *Tremblay* was a response to its earlier decision in *Consolidated-Bathurst*. In *Consolidated-Bathurst*, there was a concern that the three panel Ontario Labour Relations Board met with the full Board to discuss the policy implications of a draft decision of the three panelists. It was argued that this violated the *audi alteram partem* rule - that whoever hears a case must decide the case. In *Consolidated-Bathurst,* the Supreme Court of Canada noted that administrative tribunals, who have heard a case, may discuss and consult with others on the applicable law and the policy implications applicable to the case before it. What the tribunal may not do is to discuss the evidence; and those who heard the case must be free to decide the case as they see fit. The Supreme Court of Canada noted that it is not a question of others "influencing" the decision, but whether those who heard the case, are free to decide.

[20] In *Tremblay* the Supreme Court of Canada responded to *Consolidated-Bathurst* by relaxing administrative independence to a degree, by allowing inquiries of a tribunal's process, where evidence suggests these consultations took place and impacted the *audi alteram partem* rule. In *Tremblay*, the Commission had initially drafted a decision favourable to Mr. Tremblay. After sending that decision to the Commissioner's lawyer, who was also the President of the Commission at that time, the lawyer sent a memorandum to the Commission indicating a different result should occur. One Commissioner eventually changed their mind, creating a split vote. Ultimately, the decision went to the President, who indicated his opinion was as noted in his memorandum. The Commission then issued a decision unfavourable to Mr. Tremblay. With this evidence, the Supreme Court of Canada found it was appropriate to allow an inquiry into the deliberative process undertaken by the tribunal, but also noted that deliberative secrecy remains the rule. The Court stated it thusly:

> … Accordingly, it seems to me that by the very nature of the control exercised over their decisions administrative tribunals cannot rely on deliberative secrecy to the same extent as judicial tribunals. Of course, secrecy remains the rule, but it may nonetheless be lifted when the litigant can present valid reasons for believing that the process followed did not comply with the rules of natural justice.

[21] The Supreme Court of Canada revisited *Tremblay* and *Consolidated-Bathurst* in *Ellis-Don Ltd. v. Ontario (Labour Relations Board)*, [2001] 1 S.C.R. 221, 2001 SCC 4 (CanLII). The Court re-emphasized the need for evidence of an actual breach of the *audi alteram partem* rule. A speculative breach of the *audi alteram partem* rule is not sufficient to pierce administrative independence and deliberative secrecy:

> 49 ...*Consolidated-Bathurst* does not stand as authority for the assertion that the threshold for judicial review in every case of alleged breach of natural justice is merely an apprehended breach of natural justice.
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> ...
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> 51 In the present case, the Court must apply the normal standards of judicial review in matters involving the *audi alteram partem* rule. In support of its allegation of a breach of the *audi alteram partem* rule, Ellis-Don had to demonstrate an actual breach. As stated above, it could not get directly at the evidence after the dismissal of its interlocutory motion. The record as such does not indicate any breach of this nature. The only information available is that discussions took place at the full Board meeting and that a change was made on a question of law and policy in the draft decision. This is not sufficient to warrant judicial review.
>
> 52 The case reveals a tension between the fairness of the process and the principle of deliberative secrecy. The existence of this tension was conceded by Gonthier J. in *Tremblay*, *supra*, at pp. 965-66. Undoubtedly, the principle of deliberative secrecy creates serious difficulties for parties who fear that they may have been the victims of inappropriate tampering with the decision of the adjudicators who actually heard them. Even if this Court has refused to grant the same level of protection to the deliberations of administrative tribunals as to those of the civil and criminal courts, and would allow interrogation and discovery as to the process followed, Gonthier J. recognized that this principle of deliberative secrecy played an important role in safeguarding the independence of administrative adjudicators.
>
> **...**
>
> 56 The record shows no indication of a change on the facts, of impropriety or of a violation of the principles governing institutional consultation. Any intervention would have to be based on mere speculation about what might have happened during the consultation with the full Board. The judicial review of a decision of an

> administrative body may not rest on speculative grounds. Thus, the Divisional Court and the Court of Appeal of Ontario correctly applied the rules governing judicial review when they dismissed the appellant's application.
>
> [Underlining added.]

[22] There needs to be evidence of actual interference with the independence of a tribunal and not just speculation, before there will be judicial intervention. This balances the need to protect deliberative secrecy and the independence of a tribunal with fairness in the process. *Tremblay* does not stand for the proposition that administrative tribunals can be questioned at any time and for any reason about their deliberative process. Only when there is evidence that their ability to freely decide a case has been interfered with, may this occur. Even in *Ellis-Don*, evidence that the Full Board was consulted and amended the draft decision as to law and policy did not constitute grounds to question the Board on its deliberative process.

[23] It is also to be noted that *Consolidated-Bathurst*, *Tremblay*, and *Ellis-Don* concerned multi-person tribunals and the consultative process that necessarily occurs in such a setting. In contrast, under the MDA legislative scheme, there is only one person who administers that scheme and who sets the policy under that scheme – the Registrar.

[24] Applying these principles to this case, there is no evidence that I, as Registrar and the adjudicator, have lost independence due to the disclosure of records covered by deliberative privilege. There is no evidence that I cannot adjudicate independently, because I am directed to decide this case or any other case in a particular way. There is no evidence that someone else has attempted to influence my decision or any decisions. There is no basis to breach my administrative independence by requiring an independent person review my administrative processes. The Registrar can conduct his own review.

[25] The evidence only shows that records, which are covered by deliberative privilege, have come into the hands of the lawyer for the Authority. Those records were part of the ordered disclosure of records held by the Authority, regarding its communications with Ms. Barclay in this case.

III. Administrative error within the office of the Registrar

[26] There was an administrative error within the office of the Registrar. During this hearing, the legal administrative assistant for the Registrar communicated with Ms. Barclay. Also, part way through this hearing process, that legal administrative assistant went on leave. I now have a temporary legal administrative assistant in

place. When I ordered the disclosure of communications that the Authority had with Ms. Barclay, this necessarily included the communications of my first legal administrative assistant. It was in gathering these communications, by my temporary legal administrative assistant, that certain records, which are covered by deliberative privilege, involving my decision of January 18, 2018 in this matter, were included in the disclosure to the Authority's lawyer.

[27] The real question to ask is whether this disclosure of records covered by deliberative privilege raises a question of unfairness and - if so - how that unfairness can be addressed, while also addressing the public interest of having the allegations adjudicated.

IV. Fairness

[28] Pioneer, the Authority, and Ms. Barclay agree that an appearance of unfairness arises, because the Authority's lawyer may have gained insight into my deliberative process, in relation to this case. I agree that there is an appearance that the Authority's lawyer may have an advantage, if I were to continue as adjudicator of this case. Therefore, I will withdraw as the adjudicator in this matter.

[29] The question, then, is whether to dismiss the case outright or to order a new hearing before a Deputy Registrar.

[30] The Authority submits that ordering a new hearing before a Deputy Registrar would balance fairness in the process and the public interest of having these allegations adjudicated.

[31] Pioneer submits that there can be no further hearing in this case, as the records covered by deliberative privilege are co-mingled with other records. In Pioneer's view, to remove the privileged records from the rest would, effectively, re-contaminate the process.

[32] I disagree with Pioneer that the co-mingling of the records makes any future hearing unfair. The co-mingling of records was the result of including records covered by deliberative privilege on a thumb drive sent to the Authority's lawyer. New disclosure can occur without that co-mingling.

[33] I also agree with the Authority that any appearance of an advantage by knowing my deliberations in this case, do not flow into any future adjudicator, or any other case for that matter. The impugned records covered by deliberative privilege are unique to the issues in my January 18, 2018 decision. That decision addressed Pioneer's application to dismiss this case due to communications between Ms. Barclay and the Authority, about Ms. Barclay's evidence.

[34] The Authority submits that transcripts of the hearing to date should be allowed to be used in a subsequent hearing. If a new hearing is ordered, whether transcripts of the hearing to date should be introduced at the new hearing is an evidentiary and procedural decision for the Deputy Registrar to make. I should not make that decision for another adjudicator.

V. Public interest

[35] In considering the public interest, I keep in mind the test of whether a reasonable person, knowing the case and thinking it through, would find a re-hearing before a Deputy Registrar to be unfair.

[36] As I stated in my January 18, 2018 decision in this case, the allegations here are serious; and the public expects those allegations will be dealt with on their merits after an assessment of the evidence. If any of the allegations are proven, then the Registrar, or a Deputy Registrar in this case, is to assess any risks to the public and to take appropriate steps to protect the public.

[37] There is also a public interest in ensuring that state power and legislative authority are not abused. If this matter were reconstituted afresh, before a Deputy Registrar, would that constitute an abuse of authority? It is my opinion that it would not. If a court finds a tribunal has not provided fairness in their process, the court generally quashes the decision and provides directions to the tribunal so that the tribunal can rehear the case. No unfairness arises in such a situation. If I were to order this matter be redone before a Deputy Registrar, it would be the same as if a court had quashed the decision and ordered the tribunal to rehear the case.

Disposition

[38] In balancing the public interest of fulfilling the regulatory mandate and ensuring fairness in the process, the appropriate action is to order a new hearing before a Deputy Registrar. It is my view that a reasonable person, thinking the matter through, would accept that a new hearing before a new adjudicator would be fair.

Ms. Barclay's Question

[39] Ms. Barclay has asked for an explanation of a passage from my January 18, 2018 decision. Ms. Barclay believes Pioneer's lawyer, Mr. Schwartz, should answer her question. At paragraph 13 of Pioneer's March 13, 2018 submissions, Mr. Schwartz states that he cannot communicate with Ms. Barclay, because he is not her lawyer and she remains under the Registrar's order not to discuss her evidence with anyone. The same constraints apply to the lawyer for the Authority and the staff of the Authority.

[40] I too cannot provide Ms. Barclay with legal advice. What I can say is that the passage Ms. Barclay seeks clarification on, says that the Registrar's powers to order compensation are limited by the legislation. For the benefit of Ms. Barclay, compensation can include many things including unwinding a transaction.

Order that Ms. Barclay not discuss her evidence

[41] Given my decision here, my order that Ms. Barclay not discuss her evidence with anyone, while she is under cross-examination, is rescinded.

Review

[42] No "determination" as defined in section 180 of the BPCPA or section 26.11 of the MDA has been made. Therefore, there is no right of reconsideration.

[43] This decision may be reviewed by petitioning the B.C. Supreme Court for judicial review pursuant to the *Judicial Review Procedure Act* within 60 days of this decision being issued: 7.1(t) of the MDA.

Date: April 5, 2018

Original Signed
Ian Christman, Registrar

Vehicle Sales Authority
of British Columbia

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CORRIGENDUM

[1] My decision in this matter, dated April 5, 2018, wherein I withdrew as adjudicator and ordered a new hearing before a Deputy Registrar, contained language that suggested that I had ordered the disclosure of records. No such order was formally issued. Therefore, the following paragraphs have been corrected:

(a) Paragraph 2 said:

> [2] The basis of this application is an email of February 8, 2018, from legal counsel for the Authority, whereby he advised me and the parties that the Authority provided him with records, which were covered by deliberative privilege, **as part of an ordered disclosure of records**.

Paragraph 2 is corrected to say:

> [2] The basis of this application is an email of February 8, 2018, from legal counsel for the Authority, whereby he advised me and the parties that the Authority provided him with records, which were covered by deliberative privilege.

(b) Paragraph 4 said:

> [4] After my order, Ms. Barclay communicated with the staff at the Authority that she had additional evidence she wanted to submit. This included communications with my legal administrative assistant. All parties were advised of these communications. Pioneer then applied to have this case dismissed, because of those communications. On January 18, 2018, I denied Pioneer's application to dismiss this case. After my denial, **I issued an order** requiring the Authority to disclose all notes and communications between the Authority and Ms. Barclay to Pioneer and Mr. Smart.

Paragraph 4 is corrected to say:

> [4] After my order, Ms. Barclay communicated with the staff at the Authority that she had additional evidence she wanted to submit. This included communications with my legal administrative assistant. All parties were advised of these communications. Pioneer then applied to have this case dismissed, because of those communications. On January 18, 2018, I denied Pioneer's application to dismiss this case. After my denial, Pioneer requested an order requiring the Authority to disclose all notes and communications between the Authority and Ms. Barclay to Pioneer and Mr. Smart.

(c) Paragraph 5 said:

> [5] As part of the **ordered** disclosure process, records were provided to legal counsel for the Authority to review for solicitor-client and litigation privilege, prior to disclosure. On February 8, 2018, the Authority's legal counsel advised the parties and me that, in the disclosures he had received, there were records, which are covered by deliberative privilege. Deliberative privilege covers notes, draft decisions, or other records and communications, which tend to show the deliberations of an adjudicator. Deliberative privilege belongs to the adjudicator and no party may waive that privilege.

Paragraph 5 is corrected to say:

> [5] As part of the Authority's disclosure process, records were provided to legal counsel for the Authority to review for solicitor-client and litigation privilege, prior to disclosure. On February 8, 2018, the Authority's legal

counsel advised the parties and me that, in the disclosures he had received, there were records, which are covered by deliberative privilege. Deliberative privilege covers notes, draft decisions, or other records and communications, which tend to show the deliberations of an adjudicator. Deliberative privilege belongs to the adjudicator and no party may waive that privilege.

(d) Paragraph 25 said:

> [25] The evidence only shows that records, which are covered by deliberative privilege, have come into the hands of the lawyer for the Authority. Those records were **part of the ordered disclosure of** records held by the Authority, regarding its communications with Ms. Barclay in this case.

Paragraph 25 is corrected to say:

> [25] The evidence only shows that records, which are covered by deliberative privilege, have come into the hands of the lawyer for the Authority. Those records were included in the records held by the Authority, regarding its communications with Ms. Barclay in this case.

(e) Paragraph 26 said:

> [26] There was an administrative error within the office of the Registrar. During this hearing, the legal administrative assistant for the Registrar communicated with Ms. Barclay. Also, part way through this hearing process, that legal administrative assistant went on leave. I now have a temporary legal administrative assistant in place. **When I ordered the disclosure of** communications that the Authority had with Ms. Barclay, **this** necessarily included the communications of my first legal administrative assistant. It was in gathering these communications, by my temporary legal administrative assistant, that certain records, which are covered by deliberative privilege, involving my decision of January 18, 2018 in this matter, were included in the disclosure to the Authority's lawyer.

Paragraph 26 is corrected to say:

> [26] There was an administrative error within the office of the Registrar. During this hearing, the legal administrative assistant for the Registrar communicated with Ms. Barclay. Also, part way through this hearing process, that legal administrative assistant went on leave. I now have a temporary legal administrative assistant in place. The communications that the Authority had with Ms. Barclay, necessarily included the communications of my first legal administrative assistant. It was in gathering these communications, by my temporary legal administrative assistant, that certain

records, which are covered by deliberative privilege, involving my decision of January 18, 2018 in this matter, were included in the disclosure to the Authority's lawyer.

Date: April 13, 2018

Original Signed
Ian Christman, Registrar