

CANADA / JUDGMENT

Hart v. Canada (Public Safety and Emergency Preparedness)

2026 FC 573

COURT

Federal Court

DECIDED

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Notes

A correction was made on May 1, 2026

Decision Content

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Docket: T-1585-24

Citation: 2026 FC 573

Ottawa, Ontario, April 30, 2026

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

LEE HART

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Overview [1] This is an application brought pursuant to subsection 41(1) of the Access to Information Act, RSC 1985, c A-1 [the ATIA], concerning a request [the Request] for access to certain records under the control of the Royal Canadian Mounted Police [RCMP]. The RCMP has provided partial disclosure of the requested records, including applying redactions to some of the records disclosed.

- [2] Following that partial disclosure, the Applicant made a complaint under the ATIA to the Office of the Information Commissioner [the OIC]. The OIC found that the information the RCMP continued to withhold met the requirements of subsection 19(1) of the ATIA (an exemption from disclosure related to personal information) and the requirements of subparagraph 16(1)(a)(ii) of the ATIA (an exemption from disclosure related to law enforcement investigations) and that the RCMP reasonably exercised discretion available to it under subparagraph 16(1)(a)(ii).
- [3] The Applicant now seeks from the Court a remedy in this application compelling the RCMP to produce all (or at least more) of the information that was the subject of the Request or, in the alternative, remitting the Request back to the RCMP for redetermination.
- [4] As explained in greater detail below, this application is allowed, because the Respondent has not met its burden to demonstrate that the RCMP reasonably exercised discretion available to it under subparagraph 16(1)(a)(ii) of the ATIA. As a remedy, my Judgment will refer the Request back to a different decision-maker within the RCMP to exercise this discretion anew and in a manner consistent with these Reasons.

II. Background [5] The background to the Request that gives rise to this application surrounds events that occurred in Surrey, British Columbia on March 15 and 16, 2016. As described by the Applicant, Mr. Lee Hart, his son tragically took his own life on March 16, 2016, following wellness checks conducted by the RCMP at their residence.

- [6] As a consequence of this event, the Applicant made the Request under the ATIA on July 1, 2022, seeking the following information from the RCMP:

19411 66 Ave Surrey B.C. 15/3/16 – 16/3/16

- 1) All notes + Statements
- 2) All radio communication - E Division

- 3) All phone recordings + Transcripts - E Division
 - 4) Taser discharge report
 - 5) Badge No. + names of all on scene RCMP Officers
 - 6) All correspondence between E Division + car 67
 - 7) car 67 Badge No. + details
- [7] Following receipt of the Request and some preliminary communications with the Applicant, the Access to Information and Privacy Branch of the RCMP [the ATIP Branch] received 113 pages of records from RCMP “E” Division (i.e., British Columbia) on October 28, 2022 [the RCMP Records].
- [8] Branch Reviewer/Analyst, Corporal Shazad Khan [Cpl. Khan] determined that the Requested Records fell within certain exemptions under the ATIA, specifically subparagraph 16(1)(a)(ii) for investigative information pertaining to law enforcement, subsection 13(1) for information obtained in confidence, and subsection 19(1) for personal information. In exercising available discretion, Cpl. Khan determined that partial disclosure was appropriate, which determination was approved on a second review by his team leader.
- [9] On November 25, 2022, Cpl. Khan sent to the Applicant the approved disclosure that consisted of 19 pages [the First Release Package].
- [10] On January 6, 2023, the ATIP Branch was notified by the OIC that the Applicant had filed a complaint with the OIC under the ATIA, alleging that the exemptions to disclosure in the First Release Package were improperly applied [the Complaint]. As part of the resulting investigative process, the ATIP Branch re-examined the information and determined that 56 pages (in some cases, with redactions) could be released to the Applicant [the Decision]. On December 7, 2023, Cpl. Khan conveyed the Decision to the Applicant, sending him this disclosure under cover of a letter identifying that exemptions under ss 19(1), 13(1)(c), and 16(1)(a)(ii) of the ATIA had been applied [the Revised Release Package].
- [11] Following the disclosure of the Revised Release Package, the OIC considered representations from the Applicant and the RCMP in relation to the Complaint. At the conclusion of its investigative process, on May 16, 2024, the OIC issued its final report related to the Complaint [the OIC Report]. As explained below, the OIC Report concluded that, with the benefit of the disclosure in the Revised Release Package, the RCMP had properly applied exemptions under the ATIA to the remaining information withheld and, where discretion applied in relation to those exemptions, had reasonably exercised such discretion in deciding whether to withhold the information.

- [12] In relation to the exemption under subsection 19(1) of the ATIA related to personal information, the OIC concluded that the information the RCMP continued to withhold met the relevant statutory requirements, as the information was about an individual, disclosing the information could result in that individual being identified, and the information did not fall under any of the exceptions to the definition of “personal information” set out in paragraphs 3(j) to 3(m) of the Privacy Act, RSC 1985, c P-21 [the Privacy Act].
- [13] The exemption from disclosure in subsection 19(1) is subject to subsection 19(2), which affords a discretion to disclose a record containing personal information if the individual to whom it relates consents to the disclosure, the information is publicly available, or the disclosure is in accordance with section 8 of the Privacy Act. The OIC considered this provision but concluded that the RCMP had provided a detailed rationale for why none of those circumstances existed. As such, the OIC concluded that there was need no need to examine the issue of discretion under section 19.
- [14] In relation to paragraph 16(1)(a), the OIC concluded that the information met the requirements of subparagraph 16(1)(a)(ii), as the RCMP provided evidence to demonstrate that the information at issue came into existence less than 20 years prior to the ATIP Request and that the disclosure of the information at issue could reasonably be expected to harm investigations by the RCMP. As the information met the requirements of subparagraph 16(1)(a)(ii) (and as the exemption represented by that provision is discretionary), the OIC noted that the RCMP was required to reasonably exercise its discretion to decide whether to disclose the information. The OIC concluded that the RCMP had reasonably exercised that discretion, as it demonstrated that it considered factors such as severance, the purpose of the ATIA, and the interests the exemption aims to protect.
- [15] Because the information satisfied the requirements of subparagraph 16(1)(a)(ii), the OIC did not examine the RCMP’s application of paragraph 13(1)(c) to its decision to withhold the information.
- [16] Following receipt of the OIC Report, the Applicant filed a Notice of Application on June 17, 2024 [the NOA], commencing this application for review of this matter. By way of additional procedural background, I note that the record before the Court in this application includes the Applicant’s Record filed on October 23, 2025 (components of which the Respondent argues are inadmissible, as addressed later in these Reasons), a Public Respondent’s Record filed on December 29, 2025, and a Confidential Respondent’s Record filed on the same date pursuant to a Confidentiality Order issued by Associate Judge Ring on motion on December 11, 2024 [Confidentiality Order].
- [17] The Respondent brought the motion for the Confidentiality Order in order to maintain the confidentiality of the records that are the subject of this application, and other evidence and submissions in relation thereto, pending determination by the Court of the parties’ dispute as to whether the Applicant should be granted access to those records. Associate Judge Ring noted that subsection 47(1) of the ATIA obliges this Court to take reasonable precautions to

avoid premature disclosure of information that is the subject of a section 41 application. Associate Judge Ring was satisfied, having regard to the nature of this proceeding and section 47 of the ATIA, that the material which was proposed to be filed by the Respondent under seal should be treated as confidential notwithstanding the public interest in open and accessible court proceedings, because disclosure of the records would defeat the very purpose of the application.

- [18] The hearing of this application took place on March 30, 2026. In keeping with the Court's obligations under subsection 47(1) of the ATIA, a component of the hearing of this application was conducted ex parte and in camera. At the conclusion of the Respondent's principal submissions, the Court heard further submissions from the Respondent without the Applicant present, which submissions consisted principally of the Respondent answering the Court's questions related to evidence and submissions contained in Confidential Respondent's Record.
- [19] The hearing then concluded with the Applicant's reply submissions, in the course of which the Court also provided the Applicant with limited non-confidential information related to a subset of the topics that were canvassed during the Respondent's confidential submissions. That information included the fact that the complete and unredacted version of the RCMP Records exhibited to the confidential affidavit of Cpl Khan [the Confidential Affidavit] in the Confidential Respondent's Record, which was prepared in a manner intended to highlight for the Court the components that had been redacted in the Revised Release Package, employed highlighting that obscured some of those components such that they were not legible. As a result, and as explained to the Applicant at the hearing, the Respondent undertook to file under seal by April 7, 2026, a revised version of the Confidential Affidavit, with the highlighted portions of the RCMP Records displayed legibly for the Court's review.
- [20] I also explained to both parties that it was possible that, after reviewing this revised filing, I would conclude that it would be necessary to reconvene the hearing, in which case the Registry would contact the parties to make those arrangements. However, the Respondent filed the required materials on March 31, 2026, and, after reviewing the Confidential Affidavit in full, I did not conclude that a reconvened hearing was required.
- [21] Finally, in the interests of transparency, I note that after preparing this Judgment and Reasons in draft, the Court provided a copy of the draft decision to the Respondent, with the following then confidential Direction:

The Court is hereby providing a draft of its Judgment and Reasons in this matter, to the Respondent but not to the Applicant. Consistent with the process discussed at the hearing, the Court believes that the Judgment and Reasons has been prepared in a form that does not disclose any confidential information and therefore can be issued to both parties and publicly, without the need to prepare separate public and confidential versions of the decision. However, out of an abundance of caution, the Respondent is directed to advise the Court within seven days of the date of this Direction as to whether: (a) it agrees that the attached draft does not disclose any

confidential information; or (b) if it disagrees, which information the Respondent proposes should be redacted in issuing separate public and confidential versions. This Direction, the attached Draft Judgment and Reasons, and the Respondent's response to the Direction shall be treated as confidential and shall not be disclosed to the Applicant or to the public.

[22] The Respondent confirmed by written reply that the draft Judgment and Reasons did not disclose any confidential information, and identified a typographical error in the draft in that what is now paragraph 44 referred to “unlawful investigations” rather than “lawful investigations”. This Judgment and Reasons has corrected that error and has added these paragraphs 21 and 22 to explain the above process, but is otherwise in the same form as was provided to the Respondent in draft.

III. Legislation [23] The following are the principal provisions of the ATIA on which the parties rely in this application:

Law enforcement and investigations

16 (1) The head of a government institution may refuse to disclose any record requested under this Part that contains

- (a) information obtained or prepared by any government institution, or part of any government institution, that is an investigative body specified in the regulations in the course of lawful investigations pertaining to
 - (i) the detection, prevention or suppression of crime,
 - (ii) the enforcement of any law of Canada or a province, or
 - (iii) activities suspected of constituting threats to the security of Canada within the meaning of the Canadian Security Intelligence Service Act,

if the record came into existence less than twenty years prior to the request;

[...]

Personal information

19 (1) Subject to subsection (2), the head of a government institution shall refuse to disclose any record requested under this Part that contains personal information.

Where disclosure authorized

- (2) The head of a government institution may disclose any record requested under this Part that contains personal information if
 - (a) the individual to whom it relates consents to the disclosure;
 - (b) the information is publicly available; or
 - (c) the disclosure is in accordance with section 8 of the Privacy Act.

Enquêtes

16 (1) Le responsable d'une institution fédérale peut refuser la communication de documents :

- a) datés de moins de vingt ans lors de la demande et contenant des renseignements obtenus ou préparés par une institution fédérale, ou par une subdivision d'une institution, qui constitue un organisme d'enquête déterminé par règlement, au cours d'enquêtes licites ayant trait :
 - (i) à la détection, la prévention et la répression du crime,
 - (ii) aux activités destinées à faire respecter les lois fédérales ou provinciales,
 - (iii) aux activités soupçonnées de constituer des menaces envers la sécurité du Canada au sens de la Loi sur le Service canadien du renseignement de sécurité;

[...]

Renseignements personnels

19 (1) Sous réserve du paragraphe (2), le responsable d'une institution fédérale est tenu de refuser la communication de documents contenant des renseignements personnels.

Cas où la divulgation est autorisée

- (2) Le responsable d'une institution fédérale peut donner communication de documents contenant des renseignements personnels dans les cas où :
 - a) l'individu qu'ils concernent y consent;
 - b) le public y a accès;
 - c) la communication est conforme à l'article 8 de la Loi sur la protection des renseignements personnels.

[24] In *McCarthy v Canada (Indigenous Services)*, 2025 FC 1843, Justice Ahmed explained the definition of personal information for purposes of section 19 of ATIA as follows (at para 11):

[11] The exemption in section 19 of the ATIA applies to “personal information” as defined in section 3 of the Privacy Act. Section 3 of the Privacy Act defines personal information as “information about an identifiable individual that is recorded in any form,” including information relating to an individual’s employment history, financial transactions in which an individual has been involved, and “the name of the individual where it appears with other personal information...or where the disclosure of the name itself would reveal information about the individual” (Privacy Act, ss 3(b), 3(i)).

[25] Paragraphs (j) to (m) of section 3 of the Privacy Act identify exceptions to the definition of “personal information” for (amongst other sections) section 19 of the ATIA:

- (j) information about an individual who is or was an officer or employee of a government institution that relates to the position or functions of the individual including,
- (i) the fact that the individual is or was an officer or employee of the government institution,
- (ii) the title, business address and telephone number of the individual,
- (iii) the classification, salary range and responsibilities of the position held by the individual,
- (iv) the name of the individual on a document prepared by the individual in the course of employment, and
- (v) the personal opinions or views of the individual given in the course of employment,
- (j.1) the fact that an individual is or was a ministerial adviser or a member of a ministerial staff, as those terms are defined in subsection 2(1) of the Conflict of Interest Act, as well as the individual's name and title,
- (k) information about an individual who is or was performing services under contract for a government institution that relates to the services performed, including the terms of the contract, the name of the individual and the opinions or views of the individual given in the course of the performance of those services,
- (l) information relating to any discretionary benefit of a financial nature, including the granting of a licence or permit, conferred on an individual, including the name of the individual and the exact nature of the benefit, and
- (m) information about an individual who has been dead for more than twenty years;
(renseignements personnels)
- j) un cadre ou employé, actuel ou ancien, d'une institution fédérale et portant sur son poste ou ses fonctions, notamment :
 - (i) le fait même qu'il est ou a été employé par l'institution,
 - (ii) son titre et les adresse et numéro de téléphone de son lieu de travail,
 - (iii) la classification, l'éventail des salaires et les attributions de son poste,
 - (iv) son nom lorsque celui-ci figure sur un document qu'il a établi au cours de son emploi,
 - (v) les idées et opinions personnelles qu'il a exprimées au cours de son emploi;
- j.1) un conseiller ministériel, au sens du paragraphe 2(1) de la Loi sur les conflits d'intérêts, actuel ou ancien, ou un membre, actuel ou ancien, du personnel ministériel, au sens de ce paragraphe, en ce qui a trait au fait même qu'il soit ou ait été tel et à ses nom et titre;

- k) un individu qui, au titre d'un contrat, assure ou a assuré la prestation de services à une institution fédérale et portant sur la nature de la prestation, notamment les conditions du contrat, le nom de l'individu ainsi que les idées et opinions personnelles qu'il a exprimées au cours de la prestation;
- l) des avantages financiers facultatifs, notamment la délivrance d'un permis ou d'une licence accordés à un individu, y compris le nom de celui-ci et la nature précise de ces avantages;
- m) un individu décédé depuis plus de vingt ans. (personal information)

[26] Section 25 of the ATIA establishes the obligation of severance:

Severability

25 Notwithstanding any other provision of this Part, where a request is made to a government institution for access to a record that the head of the institution is authorized to refuse to disclose under this Part by reason of information or other material contained in the record, the head of the institution shall disclose any part of the record that does not contain, and can reasonably be severed from any part that contains, any such information or material.

Prélèvements

25 Le responsable d'une institution fédérale, dans les cas où il pourrait, vu la nature des renseignements contenus dans le document demandé, s'autoriser de la présente partie pour refuser la communication du document, est cependant tenu, nonobstant les autres dispositions de la présente partie, d'en communiquer les parties dépourvues des renseignements en cause, à condition que le prélèvement de ces parties ne pose pas de problèmes sérieux.

IV. Issues [27] Based on the parties' submissions, the issues for the Court's determination in this application are as follows:

Should the Court order amendment of the style of cause in this matter to change the name of the Respondent from "Attorney General of Canada and The Information Commissioner of Canada", as named in the NOA, to the "Minister of Public Safety and Emergency Preparedness"? Should the Court disregard the Applicant's affidavit, included in the Applicant's Record, as inadmissible? Which standard of review applies to this application? Was the RCMP's Decision to respond to the Request with the Revised Release Package authorized pursuant to applicable law?

V. Analysis A. Should the Court order amendment of the style of cause in this matter to change the name of the Respondent from "Attorney General of Canada and The Information Commissioner of Canada", as named in the NOA, to the "Minister of Public Safety and Emergency Preparedness"? [28] The Respondent submits that, pursuant to Rule 303 of the Federal Court Rules, SOR/98-106 and subsection 41(5) of the ATIA, the proper name of the respondent to this application is that of the head of the government institution concerned, which for the RCMP is the Minister of Public Safety and Emergency Preparedness [the Minister] (as identified Schedule 1 of the Access to Information Act Heads of Government Institutions Designation Order,

SI/2024-61).

[29] The Applicant has advanced no submissions on this issue, which is purely a procedural matter and has no bearing on the merits or outcome of the application. I agree with the Respondent's position. Consistent therewith, *Savoie v Canada (Public Safety and Emergency Preparedness)*, 2022 FC 333 [Savoie], addressed an application seeking review under section 41 of the ATIA of a decision by the RCMP, which named the Minister as the respondent. My Judgment will correct the name of the Respondent.

B. Should the Court disregard the Applicant's affidavit, included in the Applicant's Record, as inadmissible? [30] The Respondent raises a number of deficiencies in the self-represented Applicant's record but seeks relief only in relation to the Applicant's affidavit, which is uncommissioned and, in the Respondent's submission, asserts irrelevant and inadmissible opinion and argument.

[31] As the Applicant's affidavit is uncommissioned, I agree with the Respondent that neither it nor the documents attached as intended exhibits can serve as evidence in this application. I also agree with the Respondent that much of the content of the affidavit itself would not represent admissible evidence even if the affidavit had been properly commissioned. However, the assertions in the affidavit assist the Court in understanding the position that the Applicant is advancing in this application. As such, I am prepared to treat the body of the affidavit as argument, although not as evidence, and the Court will disregard any references therein to evidence that does not form part of the record before the Court.

C. Which standard of review applies to this application? [32] The Applicant submits that the standard of review applicable to the final issue above (being the substantive issue for the Court's determination) is reasonableness, as informed by the decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov].

[33] The Respondent submits that reasonableness does not apply to the entirety of the Court's analysis of the substantive issue, because section 44.1 of the ATIA provides that, when determining an application under section 41 of the ATIA, the Court conducts what amounts to a *de novo* review by hearing and determining the application as a new proceeding. As such, the Court's role is to determine whether or not the relevant records fall within the exemptions provided for in the ATIA (*Canada (Health) v Elanco Canada Limited*, 2021 FCA 191 at para 15; see also *Savoie* at para 34, and *Canadian Taxpayers Federation v Canadian Broadcasting Corporation*, 2026 FC 226 [Canadian Taxpayers Federation] at para 21).

[34] For exemptions that require the federal institution to exercise discretion, the *de novo* review has been bifurcated into a determination of whether the statutory exemption applies and a reasonableness review, pursuant to the principles of *Vavilov*, of the decision maker's exercise of discretion (*Perreault v Canada (Foreign Affairs)*, 2023 FC 1051 at paras 40-41; *Matas v Canada (Global Affairs)*, 2024 FC 88 at para 16; *Savoie* at para 36; *Geophysical Service Incorporated v Canada-Newfoundland & Labrador Offshore Petroleum Board*, 2024 FC 1616 at paras 29-33).

[35] Pursuant to subsection 48(1) of the ATIA, the RCMP, as the party asserting that the exemptions apply, bears the burden of proving, on a balance of probabilities, that the removed or redacted portions of the RCMP Records fall within the exemptions (Canadian Taxpayers Federation at para 21).

D. Was the RCMP's Decision to respond to the Request with the Revised Release Package authorized pursuant to applicable law? [36] As previously noted, the RCMP invoked ss 13(1)(c), 16(1)(a)(ii), and 19(1) of the ATIA as exemptions justifying the Decision. However, like the OIC, the Respondent's submissions have focused upon ss 16(1)(a)(ii) and 19(1). I will therefore address those exemptions in these Reasons.

[37] In order to qualify for an exemption under subparagraph 16(1)(a)(ii), the withheld information must have come into existence less than 20 years before the date of the relevant request, be obtained or prepared in the course of a lawful investigation by an investigative body specified in the regulations made under the ATIA, and pertain to the enforcement of any law of Canada or a province. As the Respondent submits, there is no dispute as to the date of the RCMP Record or that the RCMP is an investigative body under section 9 and Schedule I of the Access to Information Regulations, SOR/83-507.

[38] To the extent there is any controversy surrounding the application of subparagraph 16(1)(a)(ii), it relates to whether the RCMP Records pertain to the enforcement of any law of Canada or a province. However, while the Applicant advances other arguments (canvassed below) in support of his position that the Decision is unlawful, I do not understand him to be arguing that this particular requirement is not met. Nevertheless, for the sake of good order, I note the Respondent's explanation that the information in the RCMP Records was prepared in the course of investigations under the Mental Health Act, RSBC 1996, c 288 [the Mental Health Act] and the Coroners Act, SBC 2007, c 15 [the Coroners Act].

[39] The Respondent further explains that paragraph 18(d) of the Royal Canadian Mounted Police Act, RSC 1985, c R-10 [the RCMP Act], provides that it is the duty of RCMP members who are peace officers to perform duties and functions prescribed by regulation. The Respondent also notes that paragraph 14(1)(c) of the Royal Canadian Mounted Police Regulations, 2014, SOR/2014-281, provides that such duties include maintaining law and order in those provinces with which the Minister entered into an arrangement under section 20 of the RCMP Act and carrying out their duties specified in those arrangements. The Respondent identifies the Police Act, RSBC 1996, c 367 as the counterpart provincial legislation contemplating such an arrangement.

[40] In the absence of any assertion by the Applicant to the contrary, I am satisfied, without requiring evidentiary support or analysis beyond the foregoing, that the RCMP was acting within its statutory mandate on March 15-16, 2016, in conducting investigations pursuant to the Mental Health Act prior to the death of the Applicant's son and pursuant to the Coroners Act following his death. Further, based on my review of the RCMP Records contained within the Confidential Affidavit, I am satisfied that the information therein was obtained or

prepared by the RCMP in the course of those investigations. I am therefore satisfied that the exemption created by paragraph 16(1)(a) is engaged.

- [41] In so concluding, I have considered an argument advanced by the Applicant in oral submissions to the effect that, in order to withhold information under subsection 16(1) of the ATIA, the RCMP must establish that disclosure could reasonably be expected to be injurious to the conduct of its investigation. However, the Applicant advances this argument based on the language in paragraph 16(1)(c). The RCMP does not seek to rely on this paragraph, and the structure of section 16 is such that the requirements of paragraph 16(1)(c) do not represent a constraint on the application of paragraph 16(1)(a). I recognize that the OIC Report includes a conclusion that disclosure of the information at issue in this matter could reasonably be expected to harm investigations by the RCMP. Nevertheless, I find that the RCMP is not required to demonstrate that the disclosure of the information at issue would be injurious to its investigation, in order to rely on the exemption in paragraph 16(1)(a).
- [42] However, because the exemption provided by subsection 16(1) is permissive, the RCMP retains a discretion to disclose all or part of a record, even when the subsection is engaged and authorizes the withholding of the relevant information. The Applicant argues that the RCMP has not properly exercised that discretion. The Applicant also argues that section 25 of the ATIA imposes a mandatory duty, where it can reasonably be done, to sever and disclose any part of an otherwise exempted record that does not itself contain exempted information. The Applicant further submits that, to meet its burden to justify withholding information, the Respondent must adduce evidence in support of that justification a line-by-line basis.
- [43] The Respondent disputes the Applicant's position that either the exercise of discretion under subsection 16(1) or the analysis under section 25 as to whether non-exempt information can reasonably be severed from exempt information requires a line-by-line analysis. However, neither party has cited any authority in support of its position on this point and, as this point is not material to the determinative finding in this application (explained below), I decline to adjudicate that dispute.
- [44] I also note that I am not convinced that section 25 particularly assists the Applicant in the context of the RCMP's reliance on the exemption created by paragraph 16(1)(a). The RCMP Records by their nature inherently represent documents containing information obtained by or prepared by the RCMP in the course of lawful investigations, and it is not apparent to the Court that there is any portion thereof that would not be subject to that exemption and therefore a candidate for severance under section 25.

- [45] However, I agree with the Applicant that the RCMP has not reasonably exercised its discretion under subsection 16(1). As explained below, that conclusion turns not on the absence of evidence or argument from the Respondent related to a line-by-line analysis, but rather on the overall absence of justification in the record for the manner in which that discretion was exercised.
- [46] In the Confidential Affidavit, Cpl. Khan refers to the principles that guided him in applying redactions in the exercise of his discretion. The Confidential Affidavit also attaches, in addition to the unredacted version of the RCMP Record, the exemption analysis that Cpl. Khan performed in response to the Complaint. The difficulty is that it is not apparent to the Court, from either the principles referenced by Cpl. Khan or the exemption analysis, why particular pages or portions of pages in the RCMP Record were disclosed and others were not.
- [47] Perhaps the best example of this absence of justification is demonstrating by the different approach taken to the portions of the RCMP Record related to the investigations under the Mental Health Act and the Coroners Act. From the portion related to the Coroners Act investigation, the RCMP disclosed many pages in full or in part. From the portion related to the Mental Health Act investigation, all the pages were withheld in full. The record before the Court does not provide any explanation, or allow the Court to infer from its review of the RCMP Records, the rationale for the disparate treatment of the records related to the two investigations.
- [48] Similarly, while substantial information related to the Coroners Act investigation was disclosed, and some of the information that was not disclosed was likely withheld under subsection 19(1), it is otherwise not possible for the Court to discern why (in the RCMP's conduct of its discretionary analysis under section 16(1)), particular information was withheld and other information was not.
- [49] In arriving at these conclusions, I hasten to add that the Court is not intending to cast aspersions upon Cpl. Khan's explanation of the principles that guided his exercise of discretion. The Court's conclusion that such discretion was not exercised reasonably follows simply from the absence in the record of justification for the manner in which those principles translated into the particular decisions as to which information would be disclosed, withheld or redacted, in the exercise of the applicable discretion. Based on the principles explained by the Supreme Court in *Vavilov*, requiring intelligible justification of administrative decision-making, the Decision does not withstand reasonableness review.
- [50] Having arrived at this conclusion, which supports the Court allowing this application, I will turn briefly to the application of subsection 19(1) of the ATIA. The RCMP invokes that exemption alongside subparagraph 16(1)(a)(ii) for the same information that was withheld or, perhaps more accurately based on my review of the RCMP Records, subsets thereof.

- [51] As an initial point, I note that the Respondent confirmed at the hearing of this application that the RCMP did not invoke this exemption for purposes of withholding personal information of the relevant RCMP officers. Rather, the information withheld under subsection 19(1) related principally to the Applicant's son and, to a significantly lesser extent, the Applicant's son's widow.
- [52] Having reviewed the RCMP Records, I am satisfied that subsection 19(1) is engaged in relation to the portions of the same documents that the RCMP has withheld under subparagraph 16(1)(a)(ii) and that, as subsection 19(2) does not apply, the exemption from disclosure under section 19 was mandatory. That is, the RCMP was required to withhold the personal information and did not possess a discretion as it did under subsection 16(1).
- [53] But for the application of subsection 16(1), section 25 could have applied to require severance of the portions of the RCMP Records that do not contain personal information. However, given my finding that subsection 16(1) applies to the entirety of the RCMP Records, without scope for severance under that subsection, again section 25 does not assist the Applicant. That is, the RCMP cannot be required to sever and disclose records that are not covered by subsection 19(1) if they are covered by subparagraph 16(1)(a)(ii). Rather, as previously explained, the scope for disclosure of portions of the RCMP Records results from the discretion applicable under subsection 16(1), although a reasoned decision exercising that discretion must also consider portions of the RCMP Records that are subject to the mandatory application of subsection 19(1).
- [54] Before concluding my analysis, I note that I am conscious of the Respondent's submission that, while this application is not a judicial review of the OIC Report, that report is not irrelevant, as the considered opinion of the OIC should not be ignored by the Court and indeed deserves significant weight (*Savoie* at para 49). I accept that principle and have considered the OIC Report. However, with respect, in this particular case, the analysis and conclusions therein do not assist in explaining the aspect of the Decision that the Court has found lacking in justification.

VI. Conclusion [55] Based on the foregoing analysis, I will allow this application. That analysis does not support the Court ordering that the RCMP disclose certain information. If the Court had found that the RCMP erred in concluding that subparagraph 16(1)(a)(ii) and subsection 19(1) of the ATIA applied, such an order might have been appropriate. However, as the Court's conclusion is that the Decision is unreasonable in its discretionary consideration of which portions of the RCMP Record might be disclosed pursuant to subparagraph 16(1)(a)(ii) of the ATIA, the appropriate remedy (similar to the alternative relief sought by the Applicant) is for the Court to quash the Decision and remit the Request to the RCMP for redetermination in accordance with the Court's Reasons.

VII. Costs [56] The Applicant has not claimed costs in this application. My Judgment will not award costs to either party.

JUDGMENT IN T-1585-24

THIS COURT'S JUDGMENT is that:

The style of cause in this application is amended to change the name of the Respondent to the "Minister of Public Safety and Emergency Preparedness".

This application is allowed, the Decision is set aside, and the Request is remitted to a different decision-maker within the RCMP for redetermination in accordance with the Court's Reasons.

No costs are awarded to either party.

"Richard F. Southcott"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

Docket:

T-1585-24

STYLE OF CAUSE:

LEE HART. v MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

PLACE OF HEARING:

VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING:

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JUDGMENT AND reasons:

SOUTHCOTT J.

DATED:

april 30, 2026

APPEARANCES:

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For The Applicant

(ON THEIR OWN BEHALF)

Courtenay Landsiedel

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