Government of Canada Gouvernement du Canada

Bulletin

Info Source

Access to Information Act

Privacy Act

Number 20
June 1997

Canada

© Minister of Public Works and Government Services
Catalogue No. BT 51-3/10-2-1997
ISSN 1187-1741

Note: This Bulletin is in large print to assist persons with visual disabilities.

Table of Contents

Federal Court Cases 5

Statistical Tables 1996-1997 105

Statistical Tables 1983-1997 115

Access to Information and Privacy Coordinators 121

FEDERAL COURT CASES

Canada Post Corporation v. Canada (Minister of Public Works)

Court Reference:	A-372-93 (T-2059-91)
Date of Decision:	February 10, 1995
Citations:	[1995] 2 F.C. 110
Before:	Pratte, Marceau, Létourneau, JJ (F.C.A.)
Section(s) of ATIA / PA:	Sections 2, 4(1), 20, 44 *Access to Information Act (ATIA)*

Abstract

- Definition of word “control”
- Canada Post Corporation
- Principal/agent relationship
- Documents under control of government institution
- Contract between government institution and third party
- Confidentiality clause in contract
- Proprietary interest in documents
- Purpose of *ATIA*
- Possession of record/document
- Treasury Board guidelines
- Treasury Board policy
- Physical possession of document
- Analogy with discovery of documents in litigation
- Relevancy of document

Issues

1) Where Public Works Canada is the agent in a principal/agent relationship with Canada Post Corporation, can it be said that the requested documents are under the control of Public Works Canada?
2) Does the term “control” in s. 4 *ATIA* connote a proprietary interest in the records?
3) Given the purpose of the *ATIA*, does the *ATIA* apply only to information relating to government or the workings of government?
4) Does the term “control” in s. 4 *ATIA* mean something more than mere possession?
5) Is the distinction between physical and legal possession relevant in the context of the *ATIA*?

Facts

Canada Post is not a “government institution” for the purposes of the *ATIA*. It entered into two agreements with Public Works Canada, which is subject to the Act, regarding the management of Canada Post properties by Public Works. The agreements contained provisions vesting ownership of the relevant records in Canada Post and prohibiting disclosure to outside parties.

In 1991, the respondent, Michael Duquette, a C.U.P.W. union representative, applied under the *Act* for disclosure by Public Works of documents concerning Canada Post properties. Canada Post stated that the *Act* did not apply to it and that as Public Works was acting only as its agent, the provisions of the *Act* were inapplicable to those records held by Public

Works. Public Works agreed only to withhold any information where Canada Post was a third party (such that s. 20 *ATIA* applied) and to disclose the rest of the information.

Canada Post applied for a review of this decision under s. 44 of the *Act*. The Trial Division denied the preliminary application and refused to set aside the decision of Public Works. Canada Post appealed this judgment.

Decison

The appeal was dismissed. Costs were awarded to the respondent.

Reasons

Majority
Subsection 4(1) of the *Act*, which allows the right of access to records "under the control" of a government institution, must be given a liberal and purposive interpretation. This section also provides the *Act* with an overriding status regarding other federal laws. Government information, based on a reading ss. 2 and 4 of the *Act* together, includes information that is under government control. The records in question were collected by Public Works in the performance of its official duties or functions, pursuant to its contract with Canada Post.

Dissent
A department can be said to be conducting official duties only when it acts in the execution of a mandate conferred on it by Parliament or by the Governor in Council under an *Act* of Parliament. The execution of a private, commercial contract is not an official duty which would place it within the scope of the Act.

Canada (Information Commissioner) v. Canada (Minister of National Revenue)

Court Reference: T-956-95

Date of Decision: May 24, 1995

Citations: Unreported decision

Before: Richard, J. – Federal Court Trial Division (F.C.T.D.)

Section(s) of *ATIA / PA*: Sections 20 and 43 *Access to Information Act (ATIA)*

Abstract

- Notice to third parties
- Notice in newspapers
- Third party exemption

Issue

Can Revenue Canada provide notice by using newspaper advertisements rather than direct mailings?

Facts

Revenue Canada had decided to invoke s. 20 to refuse a request under the *ATIA* for information relating to as many 123,305 individuals and corporate importers. The Information Commissioner applied to the Court for a review of this

decision. Pursuant to s. 43 of the *ATIA*, when a review of a decision is sought, the government institution is required to notify all third parties who might be affected by the court's decision.

Decision

The Court authorized the use of newspaper advertisements rather than direct mailings as sufficient to satisfy Revenue Canada's obligations to provide notice under the *Act*.

Comments

Note: Although it may not have been necessary to obtain such an order (because the *ATIA* may authorize such a form of notice on its own words), counsel for the Information Commissioner insisted on an Order from the Court.

Note that no third party has participated in the review to date (July 23, 1997).

Wells v. Minister of Transport

Court Reference:	T-1315-91
Date of Decision:	May 26, 1995
Citations:	(1995), 63 C.P.R. (3D) 201
Before:	Jerome, J. – Federal Court Trial Division (F.C.T.D.)
Section(s) of *ATIA / PA*:	Section 23 *Access to Information Act (ATIA)*

Abstract

- Change of decision to release documents to a party prior to release.
- Solicitor-client privilege: *Solosky v. R*. test met.

Issues

1) Is it possible to change a decision to release documents to a party made under the *ATIA* prior to its actual release?

2) If so, can a claim of solicitor-client privilege be sustained under s. 23 of the *ATIA*?

Facts

The applicant sought access to certain records held by the respondent. Although the applicant's request had originally been granted, a subsequent internal departmental review prior to the release of the records led to the determination

that certain documents contained in the files were protected. The applicant filed a complaint with the Information Commissioner when he was denied access to the documents in question.

The Information Commissioner ruled that the documents in question could be exempted or severed in part, based on s. 23 of the *ATIA* (solicitor-client privilege). The Commissioner held that the applicant's rights under the *ATIA* had been infringed by the refusal to disclose the documents after a previous decision had been made to release the very same documents. However, the Commissioner felt that the subsequent disclosure of some of these documents was sufficient to rectify the complaint. The applicant sought disclosure of the remaining documents pursuant to s. 41 of the *ATIA*.

Decision

The application was dismissed without costs.

Reasons

1) A decision to release documents to a party under the *ATIA* may be changed prior to their actual release. It is not irreversible and does not constitute a waiver that may be used to force the release of documents that are properly protected from disclosure.

2) The records in question were protected from disclosure under the scope of the solicitor-client privilege exemption under s. 23 of the *ATIA*. The party claiming privilege must satisfy the test outlined in *Solosky v. R.*, [1980] 1 S.C.R. 821 at 837. The burden falls on that party to demonstrate that each and every document in question falls squarely within the scope of the rule. The party in question must show that (a) the information was communicated by or to a government lawyer in order to provide senior government officials with advice on the legal consequences of proposed governmental activities; and (b) the information was and is confidential and was treated as such both at the initial communication and since that time.

Canada (Information Commissioner) v. Canada (Minister of Public Works and Government Services)

Court Reference:	T-426-95
Date of Decision:	June 23, 1995
Citation:	Unreported decision
Before:	Rouleau, J. – Federal Court Trial Division (F.C.T.D.)
Section(s) of *ATIA / PA*:	Section 19 *Access to Information Act (ATIA)*

Abstract

- Personal information
- Members of Parliament
- Pensions
- *Members of Parliament Retiring Allowances Act*
- Consent
- Discretion of head of institution not to disclose personal information under ss. 19(2) *ATIA*
- Rules 327 – *Federal Court Rules*

Issue

Should the list of Members of Parliament who have consented to the disclosure of their names regarding whether or not they are entitled to receive pensions under the *Members of Parliament Retiring Allowances Act* be disclosed prior to the application for review?

Facts

The Minister of Public Works and Government Services relied on s. 19 of the ATIA to deny disclosure of records concerning persons receiving or entitled to receive pensions under the *Members of Parliament Retiring Allowances Act*.

An application was made to the Federal Court to review the Minister's decision.

Public Works and Government Services Canada filed a confidential affidavit with the Federal Court. The confidential affidavit included a list of former Members of Parliament who had consented to their names being disclosed. The same affidavit except the MP's list was filed as part of the Federal Court's public record.

The Information Commissioner applied to the Federal Court pursuant to s. 47 of the *ATIA* and Rule 327 of the *Federal Court Rules* to have the list become part of the public record. He relied on ss. 19(2) of the *ATIA* which grants a government institution discretion to disclose personal information with the individual's consent and the fact that part of the affidavit was part of the court's public record as authority to unseal the affidavit.

Decision

The application was dismissed.

Reasons

The Court held that the issue whether the list should be part of the public record of the Court should be determined by the Judge who hears the application for review. The Court justified its decision by indicating the disclosure of the list would not put an end to the litigation and might cause some prejudices to the MP's who had not consented to the disclosure.

The Court referred to ss. 19(2) *ATIA* and indicated it did not impose an obligation to disclose information even if "the individual to whom it relates consents to the disclosure."

Comments

In obiter, Justice Rouleau stated: "As I read ss. 19(2), there is no obligation imposed on the Respondent to disclose information even if the individual to whom it relates consents to the disclosure."

1. Compare with case: *Information Commissioner (Canada) v. Canada (Minister of Employment and Immigration)*, [1986] 3 F.C. 63 (T.D.)

2. *Canadian Jewish Congress v. Canada (Minister of Employment and Immigration),* [1996] 1 F.C. 268 (T.D.).

3. *Grand Council of the Crees.(of Quebec) v. Canada (Minister of External Affairs and International Trade),* [1996] F.C.J. No. 903 (QL) (F.C.T.D.), T-1681-94, decision dated June 27, 1996. To note: This case is under appeal.

RUBIN V. CANADA (CLERK OF PRIVY COUNCIL)

Court Reference:	SCC No. 24147
Date of Decision:	January 24, 1996
Citations:	[1993] 2 F.C. 391 (TD) (1994) 113 D.L.R. (4th) 275 (FCA) (1996) 131 D.L.R. (4th) 608 (SCC) (1996) 179 N.R. 320 (S.C.C.)
Before:	La Forest, Sopinka, Gonthier, Cory, McLachlin, Iacobucci, Major, JJ
Section(s) of *ATIA / PA*:	Sections 35, 62, 65 *Access to Information Act (ATIA)*

Abstract

- Powers of Information Commissioner
- Communications between a government institution and an investigator for Information Commissioner
- Right to make representations to Information Commissioner
- Right to access representations made to investigator for Information Commissioner

Issues

Can the appellant have access to the records detailing the communications between the investigator for the Information Commissioner and a government institution that are under the control of the government institution?

Facts

This case stems from a refusal by the Privy Council Office (PCO) to disclose certain records to the appellant by invoking s. 35 *ATIA*. This provision appears in the part of the *Act* that deals with the investigation process that is conducted by the Information Commissioner, rather than in the parts of the *Act* dealing with exemptions or exclusions. The appellant sought access to communications between the Office of the Information Commissioner and the government institution regarding a previous access to information request which he had made.

In the decision of the Federal Court Trial Division, the Court held that s. 35 *ATIA* protected from disclosure such communications, but only during the investigation and only representations made by government institutions to the Information Commissioner and communications from the Information Commissioner to the government institution if they dealt with submissions made by the institution.

The Court of Appeal adopted a different view. It recognized that ss. 35(2) *ATIA* had two distinct purposes. By its opening portion, the subsection ensures that the persons referred to in subpars. (a) to (d) (the requester, the government institution and the third party) must have a reasonable opportunity to make representations "in the course of an investigation of a complaint". The words which follow these subparagraphs expressly deny the right of "...access to ...representations made to the Commissioner". The Court of Appeal did not see that the opening words of the subsection qualified the denial of access.

The Court of Appeal was also of the view that s. 61 ATIA (security requirements of the Information Commissioner and his staff), s. 62 ATIA (Commissioner and his staff to keep information confidential) and s. 65 ATIA (Commissioner and his staff cannot be summoned) reinforced its interpretation of ss. 35(2) ATIA and that representations remain secret after the completion of the investigation.

Decision

The appeal was dismissed.

Reasons

The Supreme Court of Canada agreed with the reasons given by Mr. Justice Stone of the Federal Court of Appeal, with the exception of costs. The appellant was entitled to his costs throughout.

GOGOLEK V. CANADA (ATTORNEY GENERAL)

Court Reference:	T-2491-94
Date of Decision:	February 7, 1996
Citations:	[1996] F.C.J. No. 154 (QL)
Before:	Heald, J. – Federal Court Trial Division (F.C.T.D.)
Section(s) of *ATIA / PA*:	Sections 2 and 69 *Access to Information Act (ATIA)*

Abstract

- Cabinet confidences
- Fees under the *ATIA*
- Costs of requests under *ATIA*
- Jurisdiction of the Court to review documents excluded under s. 69 *ATIA*
- Interrelationship between s. 2 and s. 69 *ATIA*

Issues

Does the Court have jurisdiction to review documents that have been excluded under s. 69 *ATIA* because ss. 2(1) *ATIA* states that one of the purposes of the *ATIA* is to ensure that “decisions on the disclosure of government information (are) reviewed independently of government”?

Facts

The applicant had requested disclosure of copies of all documents relating to government policy regarding fees to be charged under the *ATIA*. In particular, the applicant had requested all studies and background papers, along with internal and interdepartmental memoranda relating to the cost of access to information requests and the imposition of fees under the *Act*. Out of the total of 1771 pages involved in the application, more than 1100 pages were either partly or totally excluded under s. 69 *ATIA* [Cabinet confidences].

The applicant argued that when a s. 69 exclusion is claimed, there is no independent review of the decision. This procedure differs from the use of exemptions under the *ATIA*, where the Information Commissioner is able to examine the documents. The applicant further argued that the Court has the statutory authority to examine the documents "to ensure that the entire scheme of the Act is not subverted" because there is no other independent review. The applicant cited ss. 2(1) *ATIA* (the purpose clause) and in particular, that one of the purposes of the *Act* is to ensure that "decisions on the disclosure of government information (are) reviewed independently of government".

Decision

The application was dismissed.

Reasons

The Court held that it is without jurisdiction to hear the application pursuant to s. 69 *ATIA*. Ss. 69(1) *ATIA* employs clear and unambiguous language where it states that "(t)his *Act* does not apply to confidences of the Queen's Privy Council for Canada". There is no discretionary power vested in a government department to make such confidences accessible to the public.

A distinction must be drawn between the exempting provisions (ss. 13 to 26 *ATIA*) and the exclusionary provisions of ss. 68 and 69 *ATIA*. Ss. 68 and 69 explicitly state that the *Act* has no applicability whatsoever when one of these exclusions apply. Therefore, recourse cannot be made to ss. 2(1) *ATIA*. Since all the "words of an *Act* are to be read in their context", a consideration of the provisions of ss. 2(1) must be determined in the context of the provisions of ss. 69(1), which stipulates that none of the other provisions of the *Act*, which clearly includes ss. 2(1), are to have any application when the documents being considered are confidences of the Queen's Privy Council for Canada.

Comments

The Court cited the following cases in support of its reasoning:

Canada Post Corp. v. Canada (Minister of Public Works); Canada (Auditor Genera)l v. Canada (Minister of Energy, Mines and Resources) and Canada (Information Commissioner v. Canada (Immigration Appeal Board).

SWAGGER CONSTRUCTION LTD. V. CANADA (MINISTER OF PUBLIC WORKS AND GOVERNMENT SERVICES)

Court Reference:	T-1273-94
Date of Decision:	May 3, 1996
Citations:	Decision not reported
Before:	Pinard, J. – Federal Court Trial Division (F.C.T.D.)
Section(s) of *ATIA / PA*:	Paragraphs 20(1)(c) and (d) *Access to Information Act (ATIA)*

Abstract

- General Contractor
- Construction contract awarded to applicant
- Request to Public Works for Records
- Documents ordered sealed until expiration of time to file an appeal
- s.24 *Federal Court Act*

Issues

Should the requested information be exempted pursuant to paras. 20(1)(c) and (d) of the *ATIA*?

Facts

The Applicant had been awarded a construction contract by Public Works and Government Services Canada. PWGSC had received a request from the intervenor for access to

certain records relating to this construction contract. The Applicant had opposed the disclosure of some of these records, arguing that it would result in the loss, prejudice or interference identified in paras. 20(1)(c) and (d) of the *ATIA*. However, the applicant had not objected to the release of the construction contract itself, including instruction plans and specification.

Decision

The application was dismissed.

Reasons

The applicant had not discharged its burden in demonstrating that the documents in issue were exempt from disclosure under paras. 20(1)(c) and (d) of the *ATIA*. The information in question could not give rise to a reasonable probability of material financial loss to the Applicant or of prejudice to its competitive position or of interference with its contractual or other negotiations.

The Court relied on *Canada Packers Inc. v. Canada (Minister of Agriculture)*, [1989] 1 F.C. 47 (C.A.) and on *St.John Shipbuilding Ltd. v. Canada (Minister of Supply and Services)* (1990), 67 D.L.R.(4th) 315 (F.C.A.) in interpreting the exceptions to access in paras. 20(1)(c) and (d). These exemptions require a reasonable expectation of probable harm. The information in question could not give rise to a reasonable probability of material financial loss to the Applicant or of prejudice to its competitive position or of interference with its contractual or other negotiations.

The alleged misrepresentation and use of any of the information to the detriment of the Applicant did not constitute more than mere possibility or speculation, which did not meet the test established by the Federal Court of Appeal in the above mentioned cases.

Comments

In order not to defeat the purpose of the s. 24 review under the *Federal Court Act* in the event that the Applicant successfully appealed this decision, the Court referred in general terms only to the documents which were the subject of this application and directed that the pertinent documents which were directed to be filed in sealed envelopes continue to be so filed. The Court went on to order that upon expiration of the time limit for filling an appeal, if no appeal was filed, the documents were to be taken out of the sealed envelopes and were to form part of the public record.

STEINHOFF V. CANADA (MINISTER OF COMMUNICATIONS)

Court Reference:	T-595-95
Date of Decision:	May 29, 1996
Citations:	[1996] 114 F.T.R. 108 [1996] 69 C.P.R. (3d) 477
Justice:	Rothstein, J. – Federal Court Trial Division (F.C.T.D.)
Section(s) of *ATIA / PA*:	Sections 13(1), 15(1), 16(1), 19(1), 41, 47, 52 *Access to Information Act (ATIA)*

Abstract

- Disclosure to counsel for purposes of arguing access case on its merits denied
- Discretion of Court, under s. 47, as to whether disclosure should be ordered
- Onus on counsel to satisfy Court that disclosure necessary where confidentiality claims based on subss. 16(1) and 19(1) *ATIA*.
- Undertaking by counsel
- Canadian Security Intelligence Service
- Canadian Union of Postal Workers

Issues

Should counsel be granted access to documents for the purpose of arguing the access case on its merits, subject to an undertaking by counsel of non-disclosure and the appropriate security clearance.

Facts

These were interlocutory motions for interim orders allowing the counsel applicants' access, on a confidential basis, to the documents and information to which the applicants had been refused access, subject to counsel's undertaking of non-disclosure and obtaining the appropriate level of security clearance. The position of the applicants' counsel was that he required access to the information in order to be able to argue the access case on its merits. The information which the applicants had requested from the archival records of the Canadian Security Intelligence Service (CSIS) concerning the Canadian Union of Postal Workers (CUPW) had been exempted from disclosure on the basis of ss. 13(1), 15(1), 16(1) and 19(1) of the *ATIA*.

Decision

The interlocutory motions were dismissed.

Reasons

Counsel was required to make his argument on the merits without access to the undisclosed documents. The Court first examined the confidentiality claims based on ss. 13(1) and

15(1) in light of s. 52 of the *ATIA*, then proceeded to consider the confidentiality claims based on ss. 16(1) and 19(1) in light of s. 47 of the *ATIA*.

1) Confidentiality claims based on ss. 13(1) and 15(1) *ATIA*

The Court found that s. 52 of the *ATIA* prohibited disclosure to counsel for an applicant where ss. 13(1) and 15(1) are invoked. The argument that ss. 15(1) is subject to a standard of confidentiality lower than the standard under ss. 13(1) on the ground that the former is subject to an "injury test" whereas the latter is a "class claim" was rejected. Section 52 of the *ATIA* does not make any distinction between those provisions. Under s. 52, the Court has the obligation to conduct hearings *in camera* and the Government has a right to make *ex parte* representations. This necessarily implies that the information sought to be released is not to be disclosed to counsel for an applicant for the purposes of argument. Rather, the disclosure is to take place only if, after a hearing on the merits, a decision is issued ordering access to the documents.

2) Confidentiality claims based on ss. 16(1) and 19(1) *ATIA*

In contrast with the absolute prohibition under s. 52, the Court has the discretion, under s. 47, to determine whether disclosure should be ordered for the purposes of making argument on the merits of the access case. The Court was of the view that "counsel has some obligation to explain to the Court why disclosure of the information for the purposes of making effective argument is necessary". Section 47 imposes a clear duty on the Government and the Court to keep confidential information confidential. In reconciling the duty of non-disclosure with the duty of fairness, the Court must consider (a) the explanation of counsel as to why the information is necessary to make effective argument and (b) the kind of information at issue.

Depending on the circumstances of the case, knowing the section under which confidentiality is claimed and having some idea of the nature of the documents in question may be sufficient for counsel to advance his or her case. Such an approach is in conformity with the dicta in *Hunter v. Canada (Consumer and Corporate Affairs)*, [1991] 3 F.C.186 (C.A.).

In the circumstances of this case, counsel did not satisfy the Court that knowing specific names on the membership list of CUPW and on other lists generated by the Government or its agencies would assist him in making his argument. The Court found that it was sufficient for counsel to be aware of the sections upon which the Government was relying and that names were not to be disclosed. Also, the Court refused to grant counsel access to the information exempted under ss. 19(1) as to do so would, by process of elimination, be divulging information exempted under ss. 15(1) *ATIA*.

Comments

This decision is important, from a procedural point of view, in that, with respect to claims for non-disclosure other than those made pursuant to ss. 13 and 15, it specifically places on counsel an onus to satisfy the Court that the information sought is necessary to effectively argue an access case on its merits.

Compare this case with another decision regarding whether counsel for the requester should be granted access to documents: *Hunter v. Canada (Consumer and Corporate Affairs)*, [1991] 3 F.C. 186 (C.A.)

Chippewas of Nahash First Nation v. Canada (Minister of Indian and Northern Affairs)

Court Reference:	T-491-95
Date of Decision:	June 28, 1996
Citations:	(1996) 116 F.T.R. 37 (1996) 41 Admin. L. R. (2d) 232
Before:	Nadon, J. – Federal Court Trial Division (F.C.T.D.)
Section(s) of ATIA / PA:	Sections 13, and paragraph 20(1)(b) *Access to Information Act (ATIA)*

Abstract

- Indian band
- Band Council Resolutions
- Reserve lands
- Fiduciary duty
- Confidential third party information
- Information received in confidence from another government
- s. 15 Canadian Charter of Rights and Freedoms
- subs. 24(1) Canadian Charter of Rights and Freedoms

Issues

1) Does the fiduciary relationship between the federal Crown and the First Nation remove the documents from the ambit of the *ATIA*?

2) Are the documents exempted under s. 20 *ATIA*?

3) Should the First Nation be considered to be a government under s. 13 *ATIA*, such that the documents would be confidential? Does failure on the part of the Crown to consider the First Nation as a government constitute a breach of s. 15 of the *Canadian Charter of Rights and Freedoms*?

Facts

Pursuant to a request under the *ATIA*, the Department of Indian and Northern Affairs sought to release two Band Council Resolutions of the applicant. The applicant sought a review of this decision.

Decision

The application was dismissed.

Reasons

1) Fiduciary relationship

The fiduciary relationship between the Crown and Indian bands does not encompass band council resolutions, regardless of their subject matter. The applicant's position had been that documents relating to the manner by which the Crown holds title to the applicant's reserve lands is subject to a fiduciary relationship (see *Guerin* case). The applicant had argued that documents which had become part of the Crown's possession as a result of dealing with Indian lands are subject to fiduciary duties. It was further the applicant's position that such fiduciary duties of the Crown, as affirmed by s. 35 of the *Constitution Act* 1867 have supremacy over all other legislation.

The Court stated that the *Guerin* decision does not stand for the proposition that the federal government has a fiduciary duty towards aboriginal people in all circumstances. The fiduciary relationship between the Crown and First Nations stems from the unique nature of Indian title. It is uniquely referable to the land which Indian bands occupy. This fiduciary relationship does not encompass band council resolutions.

Section 35 of the *Constitution Act* 1867 only applies if an aboriginal right is an integral part of the distinctive culture (of the aboriginal society). The Court stated that the confidentiality of band council resolutions regarding aboriginal land is not an integral part of the First Nation's culture.

2) Non-application of paragraph 20(1)(b) *ATIA*
   The documents could not be exempted by virtue of para. 20(1)(b) *ATIA*. Paragraph 20(1)(b) *ATIA* did not apply to the particular band council resolutions as these BCRS did not fall within the definition of financial, commercial, scientific or technical information. (The applicant did not argue that paras. 20(1)(c) or (d) applied in oral arguments.)

3) Non-application of section 13 *ATIA*
   Section 13 ATIA did not apply to the requested documents. The applicant's affidavit failed to meet the standards enunciated by the Supreme Court of Canada in demonstrating that there had been a denial of s. 15 of the *Canadian Charter of Rights and Freedoms*. The applicant had argued that s. 13 *ATIA* should be interpreted so as to include band councils or that equal protection for band council governments ought to be read into the section. Band councils administer authority and powers delegated by the *Indian Act* which are similar to, if not greater than,

> those of a municipal government. The applicant had argued that the First Nation has a right under s. 15 of the Charter to equality before and under the law and equal protection and benefit of the law without discrimination based on race or ethnic origin.

The Court held that a "band council" may not be read into the language of s. 13 *ATIA* as para. 13(1)(d) clearly defines what constitutes a municipality for the purpose of non-disclosure of information: a government established by or pursuant to an act of the legislature of a provincial government.

The applicant had argued that failure to mention First Nations in s. 13 *ATIA* was an infringement of s. 15 of the *Charter*.

According to several decisions, the first step in a ss. 15(1) *Charter* analysis requires the Court to determine whether, due to a distinction created by the impugned law, there has been a denial of an equality right. The affidavit of Chief Akiwenzie failed to make out that a distinction was made on grounds relating either to his personal characteristics or to the group of which he was a member.

Canada (Information Commissioner) v. Canada (Minister of National Defence)

Court Reference:	T-1267-96, T-907-96
Date of Decision:	July 4, 1996
Citations:	[1996] 116 F.T.R. 131 (F.C.T.D.)
Before:	Teitelbaum, J. – Federal Court Trial Division (F.C.T.D.)
Section(s) of *ATIA / PA*:	Paragraphs 4(1)(a), 16(1)(c), 42(1)(a) and section 47 *Access to Information Act (ATIA)*

Abstract

- Intervenor status – Federal Court Rules – Practice rules
- Adjournment *sine die*
- Request for adjournment
- Canadian Charter of Rights and Freedoms
- Documents to become public later
- Right to be represented by in-house counsel

Issues

1) Could the motion for direction be continued *sine die*, or adjourned for six or more months until the Somalia Commission makes the documents public?

2) Can the in-house counsel for the CBC represent the requester in his personal capacity?

3) What is the role and status of the intervenor (Commissioner for the Somalia inquiry) in the proceedings?

Facts

The requester made an Access to Information request for records prepared by Colonel Wells (retired) in his former capacity as Director, General Security, concerning Canadian Forces' activities in Somalia and the subsequent handling of these records. The records were obtained by the Somalia Commission from the Department of National Defence under an Order to produce. The Somalia Commission proposed to argue that the requested documents should not be released to the requester until such time as the requested documents had been tabled during the course of the Commission's hearings. The Department of National Defence refused to disclose the records based on para. 16(1)(c) of the *ATIA* (i.e. injurious to the conduct of lawful investigations).

The Information Commissioner made an application for review pursuant to para. 42(1)(a) of the *ATIA* to the Federal Court. A notice of application for leave to intervene was filed by the Somalia Commission. The requester, a reporter with the CBC, filed a notice of intent to appear and indicated his solicitor of record to be the in-house counsel for the CBC.

At the hearing, counsel for the Department of National Defence made a request that the application be continued *sine die* or adjourned for a period of at least six months. Counsel suggested that this would be in the interest of justice in that the documents requested by the requester would ultimately be released by the Somalia Commission after

certain witnesses appeared before the Somalia Commission and were cross-examined on the said requested documents. Counsel for the Department of National Defence also objected to the in-house counsel representing the requester for two reasons. First, he submitted that this was a “back door method” for the CBC to become a party to the proceedings and that no statute authorizes the CBC, a public corporation, to spend taxpayer dollars to benefit an employee on a “personal” matter. Secondly, and more importantly, a conflict of interest could arise as the in-house counsel cannot serve two masters at the same time. Finally, counsel for the Somalia Commission argued it should be granted full rights as a party to the proceedings. Counsel for the requester and the Information Commissioner argued limited rights should be granted to the Somalia Commission.

Decision

1) The motion for direction should not be continued *sine die*, or adjourned for six or more months.

   The Court noted that pursuant to para. 4(1)(a) of the *ATIA*, a Canadian citizen has a right to and shall, on request, be given access to any record under the control of a government institution. Furthermore, he noted that according to the Associate Chief Justice’s Rules of Practice, a judge hearing a request for directions must deal with it without delay and in a summary way. For these reasons the Court refused the request to continue the application before it *sine die* or to adjourn it for six or more months.

2) The in-house counsel for the CBC can represent the requester in his personal capacity.

   The Court denied the request to have the requester find other counsel. He accepted the in-house counsel's submissions that she had been seconded by the CBC to represent the requester while remaining an employee of the CBC. She also undertook "that she would, immediately, resign from the CBC or from representing the requester if a conflict arose".

3) The role and status of the intervenor (Commission of the Somalia inquiry) in the proceedings.

   Notwithstanding the fact that nothing in the *ATIA* speaks to the issue of intervention, the Court was satisfied that the Federal Court Rules and the Practice Rules established by the Associate Chief Justice applied to the proceedings. The Court allowed the Somalia Commission to become an intervenor in the application for review made by the Information Commissioner with all of the rights of a party to the proceedings except the right to file affidavits for evidence, the right to appeal and the right to receive costs.

The Court was satisfied that the Somalia Commission met the conditions to be granted standing as an intervenor. Questions to be asked are:

1) Is the proposed intervenor directly affected by the outcome?

2) Does there exist a justiciable issue and a veritable public interest?

3) Is there an apparent lack of any other reasonable or efficient means to submit the question to the Court?

4) Is the position of the proposed intervenor adequately defended by one of the parties to the case?

5) Are the interests of justice better served by the intervention of the proposed third party?

6) Can the Court hear and decide the cause on its merits without the proposed intervenor?

The Court refused the Somalia Commission the right to file affidavits because it could not help the Court in determining whether the Information Commissioner's application for review was well-founded. The Court also refused the Somalia Commission the right to appeal the decision of the Trial Division's decision and the right to receive costs because the Somalia Commission was not a party to the proceedings. The Court specifically allowed the Somalia Commission the right to argue "any point of law" if the points of law were relevant to the hearing and related to the matters affecting the interests in the Somalia Commission.

Comments

1) An important secondary issue that arose in this case, but which has not yet been argued in Court and has not been resolved between the Information Commissioner and the Government, is the question of whether the Information Commissioner can introduce in the confidential affidavits solicitor-client privileged communications it obtained from the Department of National Defence during its investigation. These communications were **not** requested by the access requester.

2) Compare with case Canada (Information Commissioner) v. Canada (Public Works and Government Services) [1997] 1 F.C. 164; (1996) 70 C.P.R. (3d) 37 (T.D.) regarding procedures required to intervene.

The hearing of whether para. 16(1)(c) was validly claimed was to be dealt with by the Court at a future date.

Canada (Attorney General) v. Canada (Information Commissioner)

Court Reference:	T-1928-96
Date of Decision:	September 4, 1996
Citations:	(1996), 119 F.T.R. 77 (F.C.T.D.)
Before:	McKeown, J. – Federal Court Trial Division (F.C.T.D.)
Section(s) of *ATIA / PA*:	Sections 30, 35 and 37 *Access to Information Act (ATIA)*

Abstract

- Prohibition
- Interim interlocutory injunction
- Information Commissioner
- Publishing of Information Commissioner's findings
- Reporting by Information Commissioner to requester
- Public disclosure of report of Information Commissioner
- Apprehension of bias
- Actual bias
- "Somalia Inquiry"
- Department of National Defence
- Three part test for an injunction: serious issue, irreparable harm to applicant, balance of convenience
- *Metropolitan Stores v. Manitoba Food and Commercial Workers*

- Filing of confidential affidavits
- Duty of fairness
- Material regarding complaint investigation.

Facts

The applicants sought to have certain affidavits filed confidentially and a prohibition or an interim interlocutory injunction prohibiting or enjoining the Information Commissioner from publishing or reporting to the respondent Drapeau a copy of his report of findings or recommendations. The applicant also sought an order barring Col. Drapeau from making any public disclosure of the report, if the Court should find that the Information Commissioner was bound to deliver a copy of the report to Drapeau.

Issues

1) Should the Court permit the applicants to file certain affidavits confidentially?

2) Should an order be given prohibiting or enjoining the Information Commissioner from publishing or reporting to the requester a copy of his report of findings or recommendations?

3) If the report is given to the requester, should the Court issue an order barring the requester from publicly disclosing the report?

Decision

The prohibition and the interim interlocutory injunction were not granted.

Reasons

The test for granting an injunction, as enunciated in *Metropolitan Stores v. Manitoba Food and Commercial Workers* had not been met.The test as stated in *Metropolitan Stores* in the granting of an injunction is that there must be a serious issue, irreparable harm to the applicants and a balance of convenience.

Serious issue – The Court was not prepared to find on the evidence that there was a serious issue with respect to the lack of jurisdiction. The Court recognized that the *ATIA* requires the release of the report and that there is a provision under the Act for challenging the report. It is a recommendation which requires a duty of fairness, albeit at a relatively low level. The Court stated that it was not its role to review the appropriateness of the report, but the report's lawfulness. The Court held that the Commissioner had met the level of duty of fairness requirements. The Court was not prepared to find on the evidence that there had been a serious issue with respect to the lack of jurisdiction. The first part of the test had therefore not been met.

Irreparable harm – There was no irreparable harm as the Commissioner had found only a reasonable apprehension of bias.

Balance of convenience – favoured the release of the report.

The Court also held that the material relating to the investigation of the complaint in the affidavits and exhibits should be kept confidential, citing ss. 35(1) *ATIA*.

Bitove Corporation v. Canada (Minister of Transport)

Court Reference:	T-2703-95
Date of Decision:	September 20, 1996
Citations:	[1996] 119 F.T.R. 278
Before:	Pinard, J. – Federal Court Trial Division (F.C.T.D.)
Section(s) of *ATIA / PA*:	Paragraphs 20(1)(b), 20(1)(c) *Access to Information Act (ATIA)*

Abstract

- Leases
- Competitor being requester
- Pearson International Airport
- Confidentiality of documents which are made public in other court proceedings
- contract between parties.

Issues

1) Does paras. 20(1)(b) and (c) *ATIA* apply to the lease and related documents?

2) Is the fact that some of the requested information had been made public in court proceedings relevant?

Facts

A competitor of the applicant had requested access to certain records which the applicant had provided to the respondent Department. These records related predominantly to the negotiation of a lease between the two parties with respect to goods and services provided at Pearson International Airport. The respondent had originally exempted the information under paras. 20(1)(b) and (c) ATIA. Almost a year later the Department advised the applicant of its intention to release these records, since it was of the view that much of the requested information had been made public as a result of a court case involving the applicant and the Crown. The applicant sought a review of this decision.

Decision

The application was granted.

Reasons

The documents in question were protected from release under paras. 20(1)(b) and (c) *ATIA*.

The Court was satisfied that all of the information regarding Terminal 1 and Terminal 2 had been provided to the respondent in confidence and only as a result of the contractual relations between the parties. This information would not be and was not available to anyone other than the applicant and respondent.

The information regarding Terminal 3 was also confidential to the applicant. All of the information which the applicant's competitor sought had been maintained within the strictest confidence by the applicant.

The Court recognized that this information would be of great assistance to the applicant's competitors to determine precisely how and where the applicant negotiated its contractual arrangements with the respondent, how it conducted its affairs at the airport and how it directed its sale efforts at the airport. The Court stated "to provide a competitor of the applicant with that information would allow a competitor a direct insight into its plans and strategies, something that has taken years of work for the applicant to determine."

Since it was established that very little of the requested information had been made public in the court case mentioned above, the Court ordered that none of the requested documents be disclosed.

Comments

This decision should be compared with other cases:

1. concerning leases: *Halifax Developments Ltd. v. Canada (Minister of Public Works and Government Services)* [1994] F.C.J. No. 2035 (QL) (F.C.T.D.), T-691-94, decision dated September 7, 1994 and *Perez Bramalea Ltd. v. Canada (National Capital Commission)*, T-2572-91, T-611-92, T-1393-93, decision dated February 2, 1995, F.C.T.D., not reported;

2. concerning competitors: *Prud'homme v. Canada (Canadian International Development Agency)* (1994), 85 F.T.R. 302 (F.C.T.D.) and *Société Gamma Inc. v. Canada (Secretary of State)* (1994), 56 C.P.R. (3d) 58; 79 F.T.R. 42 (F.C.T.D.) and

3. concerning documents that were produced in Court: *Chandran v. Canada (Minister of Employment and Immigration)* (1995), 91 F.T.R. 90 (F.C.T.D.).

Canada (Information Commissioner) v. Canada (Minister of National Defence)

Court Reference:	T-2732-95
Date of Decision:	October 4, 1996
Reference:	(1996), 120 F.T.R. 207 (F.C.T.D.).
Before:	Dubé J. (F.C.T.D.)
Sections of ATIA / PA:	Subsection 10(3) and paragraph 42(1)(a) *Access to Information Act* (ATIA)

Summary

- Access to part of a document
- Written notice of final disclosure (of part of record)
- Written notice of refusal of final disclosure of pages not disclosed, after the filing of an application
- Does final disclosure constitute deemed refusal to disclose based on continuing failure to disclose or is it final communication beyond the time limit?
- Deemed refusal
- Final communication beyond time limit

Issue

Is the respondent's disclosure of a significant portion of the document requested either 1) deemed refusal to disclose based on continuing failure to disclose by the institution concerned or 2) final disclosure beyond the time limit?

Facts

This was an application for review under para. 42(1)(a) *ATIA* of a deemed refusal by the respondent to disclose 155 pages of a 1,204-page document.

After receiving two access requests in August 1994 and after the respondent failed to meet the extended time limit, the applicant filed two complaints with the Commissioner's office. Only after three investigations by the Commissioner and commitments from the respondent to give written notice before mid-December 1995 did the respondent notify the applicant in writing of its decision to disclose a significant portion of the documents requested (1,049 pages of a 1,204-page document). However, it was not until 20 days after the application for review was filed with the Federal Court that the respondent informed the applicant in writing of its final decision to refuse to disclose the last 22 pages of the document requested, citing s.13(1)(a) and (b), 15(1), 19(1) and 21(1)(a) and (b) and s. 69 for the other small part of the document.

Decision

The application was dismissed on the grounds that it was premature.

Reasons

The respondent's decision to disclose the bulk of the document requested (1,049 of 1,204 pages) is final disclosure beyond the time limit. This "disclosure beyond the time limit does not necessarily destroy the institution's right to take advantage of the exemptions and exceptions provided for in

the *ATIA* when the Commissioner is still able to consider the validity of those exemptions and exceptions and seek comments from the institution."

The Court pointed out that a delay by a federal institution in invoking an exemption in a timely manner in order to justify its refusal to disclose all or part of a document can be fatal, because, following an investigation by the Commissioner of the validity of the exemption in question, the institution is bound by the reasons initially set out in the notice of refusal. Moreover, the Court referred to the decision in Davidson v. Canada ([1989] 2 F.C. 341 (C.A.)), where adding new reasons for exemption at trial would deprive the applicant of access to the benefit of the Commissioner's investigation procedures and assistance.

In the circumstances of this case, however, the Court reiterated the position it took in *Rubin v. Canada* (T-891-93, December 21, 1995, unpublished), namely that only where the Commissioner no longer has the opportunity to investigate is the institution no longer able to change its reasons for refusal.

Since what was at play in this case was a written notice of final disclosure (of part of a document) and not refusal of disclosure, the Commissioner is still able to receive a complaint against the written notice of refusal of final disclosure made after this application was filed and to investigate such complaint.

The Commissioner's application was therefore premature.

Comments

The applicant filed an appeal from this decision on October 9, 1996.

Canada (Information Commissioner) v. Canada (Minister of Public Works and Government Services)

Court Reference:	T-426-95 (A-828-96)
Date of Decision:	September 23, 1996
Citations:	[1997] 1 F.C. 164 (1996) 70 C.P.R. (3d) 37 (T.D.)
Before:	Richard, J.– Federal Court Trial Division (F.C.T.D.)
Section(s) of *ATIA / PA*:	Sections 19, 41, 48, 53 and subsection 42(2) *Access to Information Act (ATIA),* Sections 3 and paragraph 8(2)(m) *Privacy Act (PA)*

Abstract

- Members of Parliament Pensions
- Names of retired MPs who are eligible to receive pension benefits
- Right of requester to be intervener
- Jurisdiction of court to hear intervener issues
- Publicly availability of MPs names
- Consent to release MPs names
- Disclosure in the public interest
- Members of Parliament Retiring Allowances Act
- *Federal Court Rules*
- *Public interest v. private interest*
- “May” means “shall” under subs. 19(2) *ATIA*

Issues

1) Does the Court have the jurisdiction to hear the Intervener's issues?

2) Are the names of former MPs in receipt of benefits under the *Members of Parliament Retiring Allowances Act* protected as "personal information" under s. 19 *ATIA*?

Facts

The Minister of PWGSC had refused to release the names of former MPs in receipt of pension benefits. The requester had asked, under the *ATIA*, for the names of pension recipients and the amounts of the pensions received. The information was exempted under s. 19 ("personal information") by PWGSC. The requester complained to the Information Commissioner who agreed that the amounts were exempt but disagreed that the names of the pension recipients were exempt from release. The Commissioner received the requester's consent to initiate and bear the expenses of the judicial review concerning the names of the MPs.

The Commissioner applied to the Court under s. 3 *ATIA* and para. 42(1)(a) *ATIA* and filed an originating notice of motion pursuant to Rule 319 *Federal Court Rules*. The requester applied pursuant to ss. 42(2) *ATIA* and filed a notice of intervention under Federal Court Rule 1611.

Decision

The applications were allowed in part.

Reasons

The Court ruled that it had no jurisdiction to hear the Intervenor's issues and ordered the Minister to disclose the names of all former members of the House of Commons in receipt of pension payments who have served six consecutively years as of Sept. 1, 1993. It ordered the Minister to disclose the name of any former member of the House in receipt of pension payments who purchased back his or her prior years of service to meet the six-year requirement as of Sept. 1, 1993.

The Court's reasoning on these two issues were as follows:

1) The Court has no jurisdiction to hear the Intervenor's request that the specific pension amounts be released. Rule 319 *Federal Court Rules* sets out the criteria that must be met to grant the Court jurisdiction to hear issues raised in an application for judicial review. Since the requester did not file a motion under Rules 319 and 321.1, he cannot circumvent this process by raising arguments during the discovery process or by serving a notice of intervention. Nor can the Commissioner's counsel grant that jurisdiction to the Court by deeds or by consent because parties cannot consent to the jurisdiction of a court if that court does not already possess the jurisdiction to hear the matter.

2) Normally, the names of retired MPs who receive pension benefits is personal information which would be exempt from disclosure under ss. 19(1) *ATIA*. However, this information must be released because:

   a) much of the information is publicly available (either because the list of all former MPs with the day they were first elected is available at the Library of Parliament or the

information may be gleaned from other sources such as a Who's Who of Canada, old copies of newspapers or from Elections Canada);

b) their release had been consented to by a number of MPs (78 consented; 88 refused; 98 failed to reply); or,

c) the public interest outweighs the private interest in privacy protection regarding the information that is not public knowledge or to which release has not been consented. Para. 19(2)(c) *ATIA* re ss. 8(2)(m)(i) *PA* requires the Minister to balance the competing interests of release and non-release. The Minister did not do so in this case. The legislation seeks to strike a balance between the competing interests of a person's entitlement to a reasonable expection of privacy and the public interest in the disclosure of government information. The Minister never addressed his mind to weighing the competing interests; rather, the Minister accepted, without question, the legal advice submitted to him that "we must, as we always do in cases involving personal information, give the benefit of the doubt in favour of protecting the information". Giving the "benefit of the doubt" does not evince a weighing of the competing interests. The fact that the requested information deals with persons does not itself suffice to make the privacy interest paramount. In *Canadian Association of Regulated Importers v. Canada*, the Court of Appeal held that a Court may interfere with a discretion when the policy decision is based entirely or predominantly on irrelevant factors or when there is an absence of evidence to support the policy decision.

Comments

1) This decision contradicts, in part, the decision, *Grand Council of the Crees (of Quebec) v. Canada (Minister of External Affairs and International Trade)* [1996] F.C.J. No. 903 (QL) (F.C.T.D.), T-1681-94, decision dated June 27, 1996; where Pinard, J. ruled that ss. 19(2) *ATIA* was discretionary because the word "may" used in that section means "may". (The decision in *Canadian Jewish Congress v. Canada (Minister of Employment and Immigration*), [1996] 1 F.C. 268 (T.D.) supports the Quebec Cree decision). In the PWGSC decision, Richard, J. interpreted the word "may" to mean "shall" – if one the conditions in ss. 19(2) exists then the head of the institution must release the personal information. The head has no discretion to refuse to release the information. The Federal Court (Trial Division) is divided in its interpretation of the word "may" in ss. 19(2) *ATIA*.

2) Compare with case *Canada* (*Information Commissioner) v. Canada (Minister of National Defence)* [1996] 116 F.T.R. No. 903 (QL) (F.C.T.D.), T-1267-96, T-907-96, date of decision July 4, 1996 re: procedures required to intervene.

STEVENS V. CANADA (PRIME MINISTER)

Court Reference:	T-2419-93
Date of Decision:	February 26th, 1997
Citations:	(1997) 144 D.L.R. (4th) 553 (1997) 72 C.P.R. (3d) 129 (F.C.T.D.)
Before:	Rothstein, J.
Section(s) of ATIA / PA:	Sections 2, 23 and 41 *Access to Information Act (ATIA)*

Abstract

- Application of solicitor-client privilege to the narrative portions of a lawyer's statement of account
- Accidental release of parts of privileged material
- Appropriate exercise of discretion
- Duty to give reasons for a decision
- Factors to take into account when exercising discretion

Issues

1) Are the narrative portions of a lawyer's statements of account subject to the solicitor-client privilege?
2) If so, was the privilege waived when parts of the statement of account were released?
3) Did the head of the Privy Council Office exercise appropriate discretion in the application of s. 23 *ATIA*? (Is there a duty to give reasons for a decision under s. 23 *ATIA*? What must the decision-maker take into account in exercising discretion under this exemption?)

Facts

This was an application under s. 41 *Access to Information Act*. The applicant was provided with approximately 336 pages of legal accounts, receipts and other related documents. Typically the legal accounts showed the names of the lawyer providing the services rendered, the dates on which the services were rendered, and the time spent each day. Disbursements were listed in detail. However, the narrative portions on 73 pages of the disclosed accounts were not released under s. 23 (solicitor-client privilege). It is the refusal to disclose the narrative portions of the statements of account that gives rise to this application.

Decision

The application was dismissed.

Reasons

In answer to the first question at issue, the Court ruled that the solicitor's statements of account are directly related to the seeking, formulating or giving of legal advice or assistance. They are therefore protected by the solicitor-client privilege. This results from the decision in *Descoteaux v. Mierzwinski*, (l982) 1 S.C.R. 860, where Lamer J. stated "Where legal advice of any kind is sought from a professional legal adviser in his capacity as such, the communications relating to that purpose, made in confidence by the client, are at his instance permanently protected from disclosure by himself or by the legal adviser, except the protection be waived".

The second question at issue dealt with waiver. Waiver was alleged by the applicant for three reasons. First reason, the privilege was between counsel and Commissioner Parker who conducted an independent commission of inquiry. When the solicitors' account were sent by Commissioner Parker to the PCO they were disclosed to a third party which constituted waiver. (Ruling: Where a statute requires disclosure (e.g. of a report) no voluntariness is said to be present and no implied waiver occurs. In general, the accounting records of commissions of inquiry ultimately have to form part of government records, or be subject to government audit. Order in Council P.C. 1986-1139 required the Commissioner "to file his papers and records with the Clerk of the Privy Council as soon as reasonably may be after the conclusion of the inquiry." Thus, disclosure to the PCO was compulsory and so there was no waiver).

Second reason: The type of information included in the narrative which the respondent did not wish to disclose had already been disclosed (e.g. one complete account without deletions was disclosed outlining the nature of the services performed). This constituted partial waiver and on the principles of consistency and fairness all the privileged material must now be disclosed (Ruling: "There is ample legal authority that inadvertent release does not necessarily constitute waiver").

Third reason: The disclosure of those portions of the statement of account comprising the names of the lawyer providing the services rendered, the dates on which the services were rendered, and the time spent each day, constituted partial waiver (Ruling: The PCO removed the

narrative portions because its officials considered them to be subject to solicitor-client privilege, and disclosed the balance of the contents of the accounts because its officials believed [incorrectly in the view of the Court] that the balance was not subject to solicitor-client privilege. In the context of disclosure under the *Access to Information Act*, the partial disclosure of privileged information cannot be taken as an attempt to cause unfairness between the parties, or to mislead an applicant or a court, nor is there any indication that it would have that effect. The disclosure of portions of the solicitors' accounts did not constitute waiver of the privilege).

Regarding the third question at issue, which dealt with whether discretion was properly exercised under s. 23, Judge Rothstein quoted approvingly Judge Strayer's remarks in the *Kelly v. Solicitor General* decision that "In my view in reviewing such (a purely discretionary) decision the court should not itself attempt to exercise the discretion de novo but should look at the document in question and the surrounding circumstances and simply consider whether the discretion appears to have been exercised in good faith and for some reason which is rationally connected to the purpose for which the discretion was granted." The Court stated that it was clear that the PCO reviewed the records sought, expurgated those portions which it considered to be subject to solicitor-clilent privilege, and disclosed the balance. Those are the surrounding circumstances. Having regard to the nature of the documents and the jurisprudence regarding solicitor-client privilege, the Court was satisfied that the discretion not to disclose was exercised in good faith and for the reason stated in s. 23 *ATIA*.

The Court then examined two sub-issues relating to the exercise of discretion:

On the sub-issue of whether there is a duty to give reasons for a decision based on s. 23, the court is only called upon to determine whether the head of the government institution was authorized to refuse disclosure on the ground that the information sought was subject to solicitor-client privilege. The reasons for such a refusal is self-evident in s. 23, and nothing further is required. The decision of the PCO not to disclose did not require the giving of any further reasons than those contained in the decision.

On the sub-issue of what the head of the institution must take into account in exercising discretion, while nothing prevents an applicant from explaining to the head of the government department why information should be disclosed in a particular case, and nothing prevents the head of the department from taking such submissions into account, there is no obligation to do so. Under s. 23 all that need be considered by the head of the government institution is whether to waive the right, in whole or in part, or to maintain the confidentiality of information that is subject to solicitor-client privilege. That is what took place in this case.

Comments

1. This is the first s. 23 ATIA case that deals with the issues of the privileged nature of a solicitor's statements of account, inadvertent release, what must be considered in exercising discretion and whether release of privileged material to a third party is tantamount to waiver of the privilege.

DO-KY V. CANADA (MINISTER OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE)

Court Reference:	T-2366-95
Date of Decision:	February 12, 1997
Citations:	(1997), 143 D.L.R. (4th) 746 (1997), 71 C.P.R. (3d) 447 (F.C.T.D.).
Before:	Nadon, J. (F.C.T.D.)
Section(s) of ATIA / PA:	Sections 2, 4, 13, 41, 49, and 50 and paragraph 15(1)(h) *Access to Information Act (ATIA)*

Abstract

- *In camera hearing*
- Special nature of diplomatic notes
- Confidentiality
- Reasonable expectation of the international community
- Assessing probable harm under s. 15

Issues

1) Should diplomatic notes be dealt with independently of one another or should they be considered as composing a single discussion?

2) Is s. 15 *ATIA* meant to address the special nature of diplomatic correspondence or is only the information contained in such correspondence addressed by that section?

3) Did the Government satisfy its burden of proving that the head of the institution which refused to disclose the notes in issue had reasonable grounds for doing so, as section 50 *ATIA* requires?

Facts

The applicant applied for the release of two notes and any diplomatic notes relating to a case summary appended to the request (a total of four notes were examined pursuant to this access request). The applicant was notified that the notes requested were exempt from release under para. 15(1)(h) of the *ATIA* as the release of the documents might reasonably be expected to be injurious to Canada's international relations.

The applicant complained to the Information Commissioner. The foreign country notified the Government of Canada in September 1995 that it objected to the release of the notes as the issue discussed therein continued to be a sensitive topic in that state. The foreign state explicitly requested that the notes remain in confidence. The decision by the Department of Foreign Affairs to consider the request to keep the notes confidential and therefore to exempt from disclosure the notes pursuant to para. 15(1)(h) was supported by the Information Commissioner.

Decision

The application was dismissed.

Reasons

1) As the notes did in fact form a conversation between governments, it would serve little purpose to maintain the confidentiality of one half of the conversation when that half could be inferred from a reading of the other half. The Court therefore found that all notes may be exempted under s. 15 *ATIA* despite the additional protection afforded to documents which may also be considered to fall under subs. 13(1) *ATIA*. In the circumstances of this case, the Court found it unavoidable to deal with all four notes as a single package.

2) The Government could reasonably exempt diplomatic notes simply because they are diplomatic notes and not necessarily on the basis of the information contained in the notes. In the case of diplomatic notes, the Government may lawfully exempt them from release because to release them would reasonably be expected to harm international relations. This is true not necessarily because the information therein is sensitive but simply because the notes constitute confidential diplomatic communications and the international community has a reasonable expectation that such notes will remain confidential. This is especially true when the foreign state has explicitly requested that they not be released and that they remain confidential.

3) The Court was satisfied that the criteria stipulated in s. 50 *ATIA* had been met. Since the nature of the notes must be taken into consideration in assessing the probable harm and because of the affidavit adduced by the respondent, the Court found that the Government had and continued to have a reasonable apprehension of harm if it were to disclose the notes in this case. These notes were

not exempt because they were diplomatic notes but because the nature of the documents as diplomatic notes makes them sensitive as they are expected to be confidential documents irrespective of their contents.

Comments

The Court made a number of interesting comments. Two are of special importance and they read as follows:

"It must be clearly stated that the notes were ultimately exempted because they were diplomatic correspondence, and, when approached, the foreign state involved in the dialogue explicitly requested they remain in confidence. Whether the Respondent government begins with caution in the case of diplomatic correspondence is irrelevant. What is relevant is that, in the case before me, the second-party government asked for confidentiality and Canada cannot breach the trust placed in it without suffering considerable harm to its reputation in the international community and *ipso facto* to its international relations...

Finally, once a state requests that diplomatic correspondence remain confidential there is no need for the Canadian government to assess the reasons of that country. It is sufficient if they have made the request of the Canadian government. Indeed, it would be a diplomatic lapse were the Canadian government to sit in judgement of the rationale of the foreign state except in the most extreme circumstances."

DAGG V. CANADA (MINISTER OF FINANCE)

Court Reference:	S-24786 [1997] S.C.J. No. 63
Date of Decision:	June 26, 1997
Citations:	(QL) (S.C.C.)
Before:	Lamer, C.J., Sopinka, Cory, McLachlin, Iacobucci (majority) La Forest, L'Heureux-Dubé, Gonthier, Major JJ. (dissenting)
Section(s) of ATIA / PA:	Sections 2, 19(2), 48, 49 *Access to Information Act (ATIA)*; s. 2, 3(i), (j), 8(2)(m) *Privacy Act (PA)*

Abstract

- Request made for sign-in logs of government department
- Personal information
- Information about officers or employees of government institutions
- Interpretation of ss. 19(2) ATIA – Discretionary or mandatory
- Exercise of discretion under s. 8(2)(m) of the *Privacy Act*
- Exercise of discretion by Minister
- Burden on the head of government institution under s. 48 *ATIA*
- Court's determination under s. 49 *ATIA*

Issues

1) Does the information in the government workplace logs constitute "personal information" within the meaning of s. 3 of the *Privacy Act*?

2) Did the Minister fail to exercise his discretion properly in refusing to disclose the requested information pursuant to para. 19(2)(c) of the *Access to Information Act* and subpara. 8(2)(m)(i) of the *Privacy Act*?

Facts

The respondent disclosed the relevant logs but deleted the employees' names, identification numbers and signatures on the ground that this information constituted personal information and was thus exempted from disclosure. The appellant unsuccessfully sought a review by the Minister of this decision and filed a complaint with the Information Commissioner, arguing that deleted information should be disclosed by virtue of exceptions related to personal information in the *Privacy Act*. The Federal Court, Trial Division, on a review of the Minister's decision, found the information not to be personal but this decision was reversed on appeal.

Decision

The appeal should be allowed (i.e. the log-in information must be disclosed).

Reasons

Agreement was expressed by Cory J. (majority) with La Forest J.'s (dissenting) approach to interpreting the *Access to Information Act* and the *Privacy Act*, particularly that these Acts must be interpreted together. The majority also agreed with La Forest J.'s general approach to the interpretation of s. 3 "personal information" (j) of the *Privacy Act* (hereinafter para. 3(j)).

First question at issue:
Did the information in the government workplace logs constitute "personal information" within the meaning of s. 3 of the *Privacy Act*?

The number of hours spent at the workplace is information that is "related to" the position or function of the individual in that it permits a general assessment to be made of the amount of work required for a particular employee's position or function. For the same reason, the requested information is related to "the responsibilities of the position held by the individual" and falls under the specific exception set out at subpara. 3(j)(iii) of the *Privacy Act*. The information provides a general indication of the extent of the responsibilities inherent in the position. There is neither a subjective aspect nor an element of evaluation contained in a record of an individual's presence at the workplace beyond normal working hours. Rather, that record disclosed information generic to the position itself.

Second question at issue:
Did the Minister fail to exercise his discretion properly in refusing to disclose the requested information pursuant to para. 19(2)(c) of the *Access to Information Act* and subpara. 8(2)(m)(i) of the *Privacy Act*?

Subsection 19(2) of the *Access to Information Act* provides that the head of a government institution may disclose personal information in certain circumstances. Generally speaking, the use of the word “may”, especially when it is used, as in this case, in contradistinction to the word “shall”, indicates that an administrative decision maker has the discretion, and not the duty, to exercise a statutory power. In the present case, moreover, any ambiguity regarding the use of the word “may” is removed by the language of subpara. 8(2)(m)(i) of the *Privacy Act*. That provision, which is incorporated into para. 19(2)(c) of the *ATIA*, states that personal information may be disclosed where, in the opinion of the head of the institution, the public interest in disclosure clearly outweighs the invasion of privacy that could result. It is difficult to imagine statutory language that would set out out a broader discretion. Courts have repeatedly held that the use of such language indicates a discretionary power. And in a series of decisions, the Federal Court has specifically found that the power to disclose personal information in the public interest pursuant to subpara. 8(2)(m)(i) of the *Privacy Act* is discretionary.

Although the head of a government institution, under ss. 19(2) of the *Access to Information Act*, has a discretion to disclose personal information in certain circumstances, such a decision

is not immune from judicial oversight merely because it is discretionary. Abuse of discretion may be alleged but where the discretion has been exercised in good faith, and, where required, in accordance with principles of natural justice, and where reliance has not been placed upon considerations irrelevant or extraneous to the statutory purpose, the courts should not interfere.

The Minister properly examined the evidence and carefully weighed the competing policy interests. He was entitled to make the conclusion that the public interest did not outweigh the privacy interest. For this Court to overturn this decision would not only amount to a substitution of its view of the matter for his but also do considerable violence to the purpose of the legislation. The Minister's failure to give extensive, detailed reasons for his decision did not work any unfairness upon the appellant.

It could be determined that the Minister committed an error in principle resulting in a loss of jurisdiction when he stated:

> I do not believe that you have demonstrated that there were any public interest that ... clearly overrides the individual's right to privacy. [Emphasis added.]

From this, Cory J. stated that it appears that the Minister of Finance placed upon the appellant the burden of demonstrating that the public interest in disclosure clearly outweighed any privacy interest. Yet, s. 8 of the *Privacy Act* does not mention any burden of proof. It simply provides that the Minister must be satisfied that the public interest in disclosure clearly outweighs privacy. The quoted words from

the Minister's ruling could lead to the conclusion that he abused the discretion conferred upon him.

Additional rulings regarding the *ATIA* and the *PA*:

Does the *ATIA* have pre-eminence over the *PA*?

Cory J. agreed with La Forest J.'s position that "Both statutes regulate the disclosure of personal information to third parties. Section 4(1) of the *ATIA* states that the right to government information is "subject to this *Act*". Subsection 19(1) of the *Act* prohibits the disclosure of a record that contains personal information "as defined in s. 3 of the *PA*." Section 8 of the *PA* contains a parallel prohibition, forbidding the non-consensual release of personal information except in certain specified circumstances. Personal information is thus specifically exempted from the general rule of disclosure. Both statutes recognize that, in so far as it encompassed by the definition of "personal information" in s. 3 of the *PA*, privacy is paramount over access...The *ATIA* expressly incorporates the definition of personal information from the *PA*. Consequently, the underlying purposes of both statutes must be given equal effect...In summary, it is clear that the *ATIA* and *PA* have equal status, and that courts must have regard to the purposes of both statutes in considering whether a government record constitutes "personal information"."

Purpose of paragraph 3(j) and subparagraph 3(j)(iii):

Cory J. agreed with La Forest J.'s statement that the purpose of para. 3(j) and subpara. 3(j)(iii) of the Privacy *Act* is:

... to exempt only information attaching to positions and not that which relates to specific individuals. Information relating to the position is thus not “personal information”, even though it may incidentally reveal something about named persons. Conversely, information relating primarily to individuals themselves or to the manner in which they choose to perform the tasks assigned to them is “personal information”. [Emphasis in original.]

Cory J. agreed with La Forest J. that information relating to the position will consist of the kind of information disclosed in a job description, such as “the terms and conditions associated with a particular position, including ... qualifications, duties, responsibilities, hours of work and salary range”.

Cory J. also ruled that the information in the sign-in logs is related to “the ... responsibilities of the position held by the individual” and falls under the specific exception set out at subpara. 3(j)(iii) of the *Privacy Act*. Although this information may not disclose anything about the nature of the responsibilities of the position, it does provide a general indication of the extent of those responsibilities. Generally, the more work demands of the employees, the longer will be the hours of work required to complete it in order to fulfil “the responsibilities of the position held by the individual”. Nothing in subpara. 3(j)(iii) of the *Act* indicates that the information must refer to “responsibilities” in a qualitative, as opposed to quantitative, sense.

In Cory J.'s view, there is neither a subjective aspect nor an element of evaluation contained in a record of an individual's presence at the workplace beyond normal working hours. Rather, that record discloses information generic to the position itself.

Paragraph 3(j) and the "predominant characteristic" criteria:

Cory J. ruled that the number of hours spent at the workplace is generally information "that relates to" the position or functions of the individual, and thus falls under the opening words of para. 3(j). It is no doubt true that employees may sometimes be present at their workplace for reasons unrelated to their employment. Nevertheless as a general rule (thus the majority judges agreed with the Trial Division's "predominant characteristic" criteria regarding a record), employees do not stay late into the evening or come to their place of employment on the weekend unless their work requires it. Ordinarily the workplace cannot be mistaken for either an entertainment centre or the setting for a party. The sign-in logs therefore provide information which would at the very least permit a general assessment to be made of the amount of work which is required for an employee's particular position or function.

Review of Minister's discretion under paragraph 8(2)(m) Privacy Act:

Cory J. stated that a Minister's discretionary decision under subpara. 8(2)(m)(i) is not to be reviewed on a de novo standard of review. Perhaps it will suffice to observe that the Minister is not obliged to consider whether it is in the public interest to disclose personal information. However, in the face

of a request for disclosure, he is required to exercise that discretion by at least considering the matter. If he refuses or neglects to do so, the Minister is declining jurisdiction which is granted to him alone.

Burden on the head of government institution under section 48 ATIA:

The head of a government institution, pursuant to s. 48 of the *Access to Information Act*, has the burden of establishing that he or she is “authorized to refuse” to disclose a requested record. The Minister satisfied this burden when he showed that the information in the sign-in logs constituted “personal information”. Once that fact is established, the Minister’s decision to refuse to disclose pursuant to subpara. 8(2)(m)(i) of the *Privacy Act* may only be reviewed on the basis that it constituted an abuse of discretion. The Minister did not have a “burden” to show that his decision was correct because that decision is not reviewable by a court on the correctness standard. The Minister weighed the conflicting interests at stake. The fact that he stated that the appellant failed to demonstrate that the public interest should override the privacy rights of the employees named in the sign-in logs was therefore irrelevant.

Court’s determination under section 49 *ATIA*:

The reviewing court, under s. 49 of that *Act*, is to determine whether the refusal to disclose by the head of a government institution was authorized. If the information does not fall within one of the exceptions to a general right of access, the head of the institution is not “authorized” to refuse disclosure, and the court may order that the record be released pursuant

to s. 49. In making this determination, the reviewing court may substitute its opinion for that of the head of the government institution. The situation changes, however, once it is determined that the head of the institution is authorized to refuse disclosure. Section 49 of the *Access to Information Act*, then, only permits the court to overturn the decision of the head of the institution where that person is “not authorized” to withhold a record. Where the requested record constitutes personal information, the head of the institution is authorized to refuse and the de novo review power set out in s. 49 is exhausted.

THORSTEINSON V. CANADA

Court Reference:	T-1040-93
Date of Decision:	October 31, 1994
Citations:	[1994] F.C.J. No. 1621 (QL) (F.C.T.D.).
Before:	MacKay, J.
Section(s) of ATIA / PA:	Subsections 12(1), 22(2), and Sections 26, 41, 47 *Privacy Act (PA)*

Abstract

- Spirit of the *PA*
- Personal information
- Supplemental confidential affidavit
- Agreement between a province and RCMP
- Provision of local police services by the RCMP
- No prejudice
- Termination of contract with province
- Documents ordered sealed by Court
- Retrospective effect
- Personal information of other individual
- Documents ordered sealed by Court

Issues

1. Are the documents in question protected because of the fact that they were subject to an agreement under ss. 22(2) of the *PA*, even though the agreement has now expired?

2. For the purposes of proceedings under s. 41 of the *PA*, is the date of significance the date of the court hearing?

Facts

The applicant applied to the Federal Court, Trial Division, for an Order to compel the R.C.M.P. to produce certain records regarding dealings of the R.C.M.P. in relation to requests and complaints she had made. The proceedings were subsequently treated as an application under s. 41 of the *PA*.

During these proceedings, the Crown as respondent filed an affidavit and a supplemental confidential affidavit. The supplementary affidavit was filed and sealed by Court Order as confidential. The supplementary affidavit included information which was being sought by the applicant and which the respondent claimed could not be disclosed under the relevant provisions of the PA, namely ss. 22(2) [information collected pursuant to federal-provincial policing agreement with R.C.M.P.] and s. 26 [disclosure of personal information of a third party where the latter has not consented].

Decision

The Court ordered that a copy of the supplementary confidential affidavit was to be provided by the respondent to the applicant, barring certain exemptions specified in the judgement.

Reasons

The agreement made between Canada and British Columbia under which the R.C.M.P. would provide local police services in certain areas had terminated in 1993. Most of the information in the confidential supplementary affidavit had been withheld from release pursuant to ss. 22(2) *PA*.

The Court indicated its willingness to accept the Crown's contention that for the purposes of disclosure, it was willing to give retrospective effect to the termination of the agreement and provide access. Crown counsel agreed to provide a copy of the affidavit to the party, barring certain parts under s. 26 *PA*. The Court reviewed the documents in question and ruled that one page and parts of four other pages were exempt from disclosure pursuant to s. 26 *PA*.

RUBY V. CANADA (SOLICITOR GENERAL)

Court Reference:	T-638-91
Date of Decision:	February 10, 1995
Before:	Simpson, J. (F.C.T.D.)
Section(s) of ATIA / PA:	Sections 41 and 42 and subsection 52(2) *Privacy Act (PA)*

Abstract

- *Federal Court Rules* s. 324
- Declaration or advance ruling
- *Canadian Charter of Rights and Freedoms* s. 1
- Final outcome in case an important factor in determining costs
- Advance ruling regarding costs
- Costs

Issue

Should costs be awarded in advance pursuant to ss. 52(2) of the *PA*?

Facts

Pursuant to *Federal Court Rule* 324, the applicant sought a declaration or advance ruling stating that the applicant will be entitled to an order for costs in an unspecified amount regardless of the outcome of the argument under s. 1 of the *Canadian Charter of Rights and Freedoms*.

The applicant justified his entitlement to costs under ss. 52(2) of the PA, which states that where the Federal Court, Trial Division, believes that an application under s. 41 or s. 42 of the Act has raised an important new principle in relation to the Act, costs shall be awarded to the applicant even if the applicant is unsuccessful in the result.

Decision

The application was rejected.

Reasons

The Court rejected the applicant's contention that such an award of costs was inevitable.

Assuming that a new issue had been raised, its importance would depend on the outcome of the arguments to be heard by the Court in September 1995.

Moreover, the Court felt that it had no jurisdiction at the time to issue such an award or the type of opinion or declaration being sought. Subsection 52(2) PA is not to be used until the final outcome is known.

Parnian v. Canada (Minister of Citizenship and Immigration)

Court Reference:	IMM-2351-94
Date of Decision:	May 19, 1995
Citations:	Unreported decision
Before:	Wetston, J. (F.C.T.D.)
Section(s) of ATIA / PA:	Paragraph 8(2)(a) Privacy Act (PA)

Abstract

- Disclosure to a Refugee Hearing of notes taken by an immigration official at the port of entry
- Instructions to officials to maintain confidentiality of information
- Notes taken by public servant
- Consistent use
- Natural justice
- Refugee status
- Evidence submitted at refugee hearing
- Doctrine of legitimate expectation
- Substantive rights

Issues

1) Is the disclosure of the personal information collected by the immigration official at the port of entry to the Board authorized by the PA?

2) Is the disclosure prohibited because there were specific instructions to Refugee Hearing Officers that created a reasonable expectation that such notes would not be introduced into evidence in such a manner?

3) Did the board operate according to principles of natural justice when it decided it was not necessary to hear the available witness?

Facts

A person applied for refugee status. The notes taken by an immigration official at the port of entry were admitted into evidence before the Immigration and Refugee Board and used to impugn the applicant's credibility. Also, during the hearing a witness was present and ready to testify on behalf of the applicant, but the Board said the witness' testimony would not be necessary. The Board determined that the applicant was not credible on the very issue upon which the witness offered corroboration.

Decision

The Board's refusal of refugee status was set aside and the matter returned for rehearing by a newly constituted tribunal.

Reasons

The Court held that the disclosure of port of entry notes to the Refugee Board in the course of a hearing was a consistent use of the personal information gathered at the port of entry, both serving immigration purposes. Therefore, the disclosure was authorized by para. 8(2)(a) of the PA. The Court cited

three other Federal Court decisions in support of this point. Further, ss. 68(3) of the *Immigration Act* provides that the Refugee Division of the Board is not bound by any legal or technical rules of evidence and may receive any evidence it considers trustworthy. There was no doubt that the notes were verbatim accounts and that the Board provided adequate notice of the evidence.

The doctrine of legitimate expectation does not create substantive rights. Where the doctrine is held to apply, it provides a party with a right to consultation or an opportunity to make representations, which was provided in the course of the Board's hearing.

Counsel had argued that there was no breach of fairness because the Board was convinced that nothing the witness would have said could have persuaded the Board that the applicant was being truthful on the point in question. However, there was nothing on the record to this effect. The decision to say that the available witness was not necessary, and then to conclude that the applicant was not credible on the very point on which the witness would have given evidence, is a breach of the rules of natural justice. The Court held that the witness should have been given the opportunity to give corroborating evidence and that evidence ought to have at least been considered in the determination of the applicant's credibility. The Board's decision was therefore set aside.

KAISER v. CANADA (MINISTER OF NATIONAL REVENUE)

Court Reference:	T-1516-93
Date of Decision:	June 13, 1995
Citations:	Unreported decision
Before:	Rothstein, J. (F.C.T.D.)
Section(s) of ATIA / PA:	Paragraph 22(1)(b) *Privacy Act (PA)*

Abstract

- Exemption: law enforcement and investigation
- Confidential Affidavit
- Requirements of confidential affidavits
- *Income Tax Act*

Issue

Is a statement in an affidavit that "disclosure of this information would prejudice the integrity of the investigation and therefore be injurious to the enforcement of the *Income Tax Act*" sufficient information to claim para. 22(1)(b) of the *PA*?

Facts

The Minister of National Revenue relied on para. 22(1)(b) of the *PA* to deny disclosure of records he considered could reasonably be expected to be injurious to law enforcement or the conduct of an investigation. An application was made to the Federal Court to review the Minister's refusal.

Decision

The application was granted. The information must be disclosed.

Reasons

The confidential affidavits were insufficient to support the refusal under para. 22(1)(b) *PA*. Unless the harm is self evident from the record, a confidential affidavit must explain how and why the harm alleged might reasonably be expected to result from disclosure of the information. The explanation must demonstrate a link between disclosure and the harm alleged so as to justify confidentiality.

A general statement that “disclosure of this information would prejudice the integrity of the investigation and therefore be injurious to the enforcement of the *Income Tax Act*” is not sufficient because it is not an explanation but rather a “conclusion”.

Public Service Alliance of Canada v. Canada (Treasury Board et al.)

Court Reference:	161-2-791 169-2-584
Date of Decision:	April 26, 1996
Citations:	Unreported
Before:	I. Deans, M.Korngold Wexler and Y. Tarte (P.S.S.R.B.)
Section(s) of ATIA / PA:	Paragraph 8(2)(a) *Privacy Act (PA)*

Abstract

- Disclosure of names and addresses of affected employees to bargaining agents
- Unions
- Affected employees
- Re-organization of public service
- Down-sizing
- Disclosure of personal information without prior consent
- Role of union
- Interpretation of Workforce Adjustment Directive
- Lay-offs
- *Public Service Staff Relations Act*
- Bargaining Agent
- Interference by employer in representation of employees by bargaining agent

Issue

Can the names and addresses of affected employees be given to the bargaining agent without obtaining the prior consent of the affected employee?

Facts

The PSSR Board considered whether the Workforce Adjustment Directive, an agreement in principle signed between the parties pursuant to ss. 8(2) of the *Public Service Staff Relations Act* (PSSRA) created an obligation on the employer to provide the bargaining agent with the names and addresses of employees who are affected and likely to face lay-off due to the Federal Government's downsizing. Subsection 8(1) of the PSSRA provides:

> 8.(1) No person who occupies a managerial or confidential position, whether or not the person is acting on behalf of the employer, shall participate in or interfere with the formation or administration of an employee organization or the representation of employees by such an organization.

The bargaining agent felt the Agreement in Principle "created what could best be described as co-management of the downsizing process as it affects employees". The bargaining agent was of the opinion that the committees set up under the agreement were unable to fulfill their obligation without knowing the names and addresses of the affected employees. The employer was of the opinion that to divulge the names and addresses without the prior consent of the employee was

a violation of the *PA* because such a disclosure of information was not implicitly mandated under the legislation, workforce adjustment policy or the agreement in principle.

Decision

The PSSRB ordered that the names and addresses of affected employees be disclosed to the bargaining agent.

Reasons

The PSSRB held the employer was unjustified under the *PA* to require the consent of the employee prior to providing such information to the bargaining agent. It ruled that the disclosure without the consent of the employee constituted a use consistent with the purpose for which the information was obtained by the employer and was justified under para. 8(2)(a) of the *PA*.

The PSSRB was of the opinion that the failure to provide such information to the bargaining agent constituted an interference by the employer in the representation of employees by the bargaining agent contrary to s. 8 of the PSSRA.

The PSSRB held that the bargaining agent as a matter of right is entitled to the information to carry out its duty under the *PSSRA*. The tribunal relied on cases which have recognized that the bargaining agent's exclusive right to represent its members and its statutory duty to fairly represent them allows it to obtain from the employer certain kinds of relevant information. The PSSRB felt it necessarily flows that the bargaining agent has both the right and the need to know the names and addresses of affected employees.

RUBY V. CANADA (SOLICITOR GENERAL)

Court Reference:	T-638-91
Date of Decisions:	June 6, 1994 and May 31, 1996
Citations:	(1994) 80 F.T.R. 81 [1996] 3 F.C. 134
Before:	Simpson, J. (F.C.T.D.)
Section(s) of ATIA/PA:	Paragraphs 19(1)(a) and (b), sections 15, 18, 21 and 43, paragraph 51(2)(a) and subsection 51(3) *Privacy Act (PA)*

Abstract

- Information banks relating to CSIS
- Canadian Security Intelligence service
- Exempt banks
- *Canadian Charter of Rights and Freedoms* – ss. 2(b) and s. 1
- *Federal Court Act* – s. 7
- Freedom of the Press
- *Ex parte* evidence
- *In camera* hearings
- Confidential affidavits
- *R. v. Oakes regarding Canadian Charter of Rights and Freedoms*
- Press reports
- Refusal to confirm or deny existence of information

Issues

1. Do para. 51(2)(a) and ss. 51(3) Privacy Act infringe section 2(b) *Canadian Charter or Rights and Freedoms* [freedom of the press]?

2. If yes, are para. 51(2)(a) and ss. 51(3) Privacy Act saved by s. 1 of the *Canadian Charter of Rights and Freedoms* [rights and freedoms are subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society].

Facts

The respondent refused to provide the applicant with all of his personal information held by the Canadian Security Intelligence Service. Some personal information was held in one exempt bank (Bank #15). The respondent also refused to indicate whether or not personal information about the applicant was located in a second exempt bank (Bank #10). An affidavit submitted by the respondent indicated that the personal information held in "Bank 15" was older and less sensitive. In comparison, "Bank 10" related to CSIS' current and most sensitive investigations.

Section 51 *Privacy Act* provides that, in application for review made under s. 41 *PA*, the Federal Court is required, if asked, to hear representations from the Government on an *ex parte* basis. It also states that such applications must be hear *in camera*. [Section 51 is only relevant where personal information was obtained in confidence from a foreign state or related institutions or from an international organization of states or related institutions; or where the disclosure of the

personal information could reasonably be expected to be injurious to the conduct of international affairs, the defence of Canada and its allies or Canada's efforts in the detection, prevention or suppression of subversive or hostile activities.] The respondent had asked that it be permitted to make representations on an *ex parte* basis and in camera.

Decision

The application was dismissed.

Reasons

The Court was unwilling to accept a *Canadian Charter of Rights and Freedoms* challenge to s. 51 *PA* based on privacy rights, since s. 51 *PA* is simply a procedural section which established the rules of conduct for s. 41 *PA* reviews.

The Court recognized that there may be situations where it will be necessary and in the public interest to deal with the disclosure of personal information *in camera* and *ex parte*. However, to provide that such information must automatically be dealt with *in camera* and *ex parte* offends s. 2(b) of the *Canadian Charter of Rights and Freedoms*. In the Court's view, it is not appropriate to hold court in private unless, on a case by case basis, the Crown demonstrates to the satisfaction of a judge in the exercise of his or her discretion that *in camera* and *ex parte* proceedings are justified when weighed against the public interest in an open and accountable system.

However, the Court held that para. 51(2)(a) and ss. 51(3) *PA* were saved by s. 1 of the *Canadian Charter of Rights and Freedoms*. The Court made such a finding after applying the principles for a s. 1 Charter analysis as described in the Supreme Court of Canada decision in R. *v. Oakes* [1986] 1 S.C.R. 103 to the applicable paragraph and subsection of the *Privacy Act*.

CHANDRAN v. CANADA (MINISTER OF EMPLOYMENT AND IMMIGRATION)

Court Reference:	T-2506-94
Date of Decision:	June 24, 1996
Citations:	(1996), 115 F.T.R. 275 (F.C.T.D.)
Before:	Gibson, J. (F.C.T.D.)
Section(s) of ATIA / PA :	Paragraph 19(1)(c) *Privacy Act (PA)*

Abstract

- Exemption
- Note from one federal officer to another federal officer
- Personal information received in confidence from a province or institution
- Memorandum of agreement between province and Government of Canada
- Information made public during other court proceedings
- Memorandum of understanding between governments.

Issues

1) Can personal information, which had been originally received in confidence from the province of Alberta and later re-iterated in correspondence from one federal officer to another federal officer, be exempted under ss. 19(1) *PA*.

2) Were the terms of a memorandum of agreement between the Government of Canada and the Government of Alberta sufficient to demonstrate that the information was obtained in confidence?

3) Is information which had allegedly become publicly available during the course of other Court proceedings now publicly available under para. 19(2)(b) *PA*.

Facts

The applicant had requested certain information regarding himself. This information was exempted under para. 19(1)(c) PA [information obtained in confidence from the government of a province or an institution thereof].

The exempted information was described as follows:

> "... a memo and a copy of the memo... from C.A. Richter, Regional Intelligence Office, Department of Citizenship and Immigration to the Manager of CIC Calgary - Attention B. Gurney, reporting information received from a security investigation officer respecting Rengam Chandran and certain of his financial dealings with Treasury Branch and other financial dealings."

Decision

The application was dismissed.

Reasons

The Court upheld the application of para. 19(1)(c) *PA* to the requested information for the following reasons:

1) The requested information was obtained from an Alberta Treasury Branch established pursuant to the *Treasury Branches Act* of Alberta. By that Act, a province of Alberta

"Treasury Branch" is a Branch of the Treasury Department of the Government of Alberta. The Court was satisfied on the evidence that the information was obtained from the Government of a province or an institution thereof under para. 19(1)(c) *PA*.

2) The terms of a memorandum of agreement between Canada and Alberta satisfied the Court that the information had been obtained in confidence.

3) The Court found that while the applicant had presented some evidence that information in the hands of the Province of Alberta Treasury Branch relating to his financial affairs may have been made public during the course of other Court Proceedings, the evidence simply did not relate to the same information as the information at issue.

Comments

To note that the personal information that had been received in confidence from another Government was re-iterated in correspondence from one federal officer to another federal officer. The Court held that the exemption still applied even though the record itself had not been received in confidence from another Government.

For a further discussion of information received in confidence from another government see the case, *Do-Ky v. Canada (Minister of Foreign Affairs and International Trade)* (1997), 143 D.L.R. (4th) 746, 71 C.P.R. (3d) 447 (F.C.T.D.). .

Karakulak v. Canada (Minister of Citizenship and Immigration)

Court Reference:	T-132-96
Date of Decision:	July 11, 1996
Citations:	(1996), 119 F.T.R. 288 (F.C.T.D.).
Before:	Jerome, J. (F.C.T.D.)
Section(s) of ATIA / PA:	Sections 22(1)(b), 26 *Privacy Act (PA)*

Abstract

- Snitches – informants
- Names of snitches
- Names of informants
- Welfare fraud
- Immigration
- Deportation

Issue

Can the names of "snitches" as well as other information that would identify these informants be exempted from release?

Facts

The applicant requested access to her file from the Department of Citizenship and Immigration. Certain informants had written to the Department notifying officials that the applicant was working illegally, was committing welfare fraud

and should be deported. The applicant was given all information in her file, except for the names of the snitches and other information upon which she could reasonably guess the identities of the informants. The respondent exempted this information pursuant to s. 26 *PA* (names of informants was considered to be personal information to these individuals) and para. 22(1)(b) *PA* (disclosure of names of snitches could hinder enforcement of *Immigration Act*).

Decision

The application was dismissed.

Reasons

The Court upheld the use of the above exemptions. The Court stated that "All deletions were appropriate in order to protect the identity of third persons and were no more than necessary for that purpose. I therefore indicated to counsel for the applicant that my disposition of the matter would be that there would be no intervention by the Court in this matter and I hereby so order."

Comments

The facts of this case are not apparent from the decision.

Canada (Privacy Commissioner) v. Canada (Labour Relations Board)

Court Reference:	T-978-95
Date of Decision:	August 12, 1996
Citations:	[1996] 3 F.C. 609 (1996) 118 F.T.R. 1
Before:	Noël, J. (F.C.T.D.)
Section(s) of ATIA / PA:	Sections. 2, 3, 12, 22(1)(b), 26, 42 *Privacy Act (PA)*

Abstract

- Notes taken by CLRB members in the course of hearing complaints
- Control of records
- Personal information in notes
- Deliberations of decision-maker
- Views or opinions of decision-maker
- *Canada Labour Code*
- Independence of judiciary
- Independence of quasi-judicial decision-maker
- Adjudication privilege
- Dismissal of employee
- Definition of “personal information”

ISSUES

1. Do the CLRB members' notes contain "personal information" about the complainant?

2. If so, are the notes "under the control of" the CLRB, and alternatively, should they be under the control of the Board?

3. If so, has the CLRB established that the information requested is exempt under para. 22(1)(b) *PA*?

Facts

The requester had been dismissed by his employer. He complained to the CLRB who dismissed the complaint. He then made a personal information request to the CLRB under the *Privacy Act*. The CLRB provided him with the entire contents of its file dealing with his complaint but did not provide copies of the notes which its members had taken in ruling on his complaint. He complained to the Privacy Commissioner who ruled that the notes were under the control of the CLRB because they contained personal information about the complainant and were taken by the members in the course of employment and not in their personal capacity. The Privacy Commissioner filed an application under s. 42 *PA* for a review of the CLRB's refusal to disclose notes taken by its members during a hearing.

Decision

The application was dismissed.

Reasons

Issue #1

In answer to the first question, the Court ruled that the hearing notes do not contain “personal information”. The Court held that despite the wide scope of the definition of “personal information”, it is doubtful that anything expressed by a decision maker in the course of consultations or deliberations can be regarded as “personal information” about an individual. This is because nothing that is recorded by a decision maker in the course of deliberations is intended to inform. Furthermore, whatever the “views” or “opinions” expressed by a decision maker about someone in the course of deliberations, these cannot be said to be the “views” or “opinions” of the decision maker unless and until they find their way into the reasons which are eventually given for the decision.

Issue #2

The Court held that the notes were not “under the control” of the CLRB. The Court stated that there is no requirement either in the Canada Labour Code, or in the CLRB policy or procedure, touching upon the notes. The notes are viewed by their authors as their own. The CLRB members are free to take notes as and when they see fit, and indeed may simply choose not to do so. The notes are intended for the eyes of the author only. No other person is allowed to see, read or use the notes, and there is a clear expectation on the part of the author that no other person will see the notes. The members maintain responsibility for the care and safe keeping of the notes and can destroy them at any time. Finally, the notes are

not part of the official records of the CLRB and are not contained in any other record keeping system over which the CLRB has administrative control.

Issue #3
The Court agreed that requiring disclosure of the notes of CLRB members "could reasonably be expected to be injurious to the enforcement of any law in Canada" within the meaning of para. 22(1)(b) *PA* because it would interfere with the independence and intellectual freedom of quasi-judicial decision makers (i.e. CLRB members making a ruling) acting under the Canada Labour Code by revealing their personal decision-making processes and by causing them to alter the manner in which they arrive at decisions. The Court agreed that "it is clear that the notes taken by a judge in the course of a hearing are within the area of the adjudicative privilege as they stand to reveal the judge's mental processes in arriving at a decision over and beyond what is revealed by the reasons given for the decision. By their nature, notes are intended to record for future use the thought process of a judge on specific points as the hearing unfolds. They are necessary because ongoing impressions are important and memories fade. For that reason, judges must be in a position to take notes free from any intrusion and in particular, free from the fear that the notes could thereafter be subject to disclosure for purposes other than that for which they were intended. A judge must have total freedom as to what is and what is not noteworthy and the certainty that no one can thereafter put in question his or her wisdom in this regard. To allow hearing notes to be used by others for purposes other than that for which they were intended would fundamentally impede the

use of a tool that is essential to the judiciary, namely the ability and freedom to note matters of one's choice as the hearing unfolds for the sole and exclusive purpose of assisting the judge in arriving at the correct decision." This reasoning about judge's notes applies to notes taken during hearings by quasi-judicial decision makers.

Comments

It could be argued that this decision has precedential value only with regard to the notes taken by members of a quasi-judicial body.

Rafferty v. Power

Date of Decision:	January 28, 1993
Citations:	15 C.P.C. (3d) 48
Before:	Master Brandreth-Gibbs British Columbia Supreme Court
Section(s) of ATIA / PA:	Subsections 8(1), 8(2) *Privacy Act (PA)*

Abstract

- Definition of "consent"
- Civil action for damages
- Motor vehicle accident
- *Unemployment Insurance Act*
- Interpretation of wording in *PA* "subject to any other Act of Parliament"
- Interpretation of phrase "Minister deems it advisable"
- Interpretation of "written permission" and "authorize"

Issue

Was the Minister correct in his position that he will "deem it advisable" to release the records containing information relating to the plaintiff, providing the plaintiff "consents"? [The plaintiff was not willing to consent].

Decision

The application was dismissed.

Reasons

None of the paragraphs under subsection 8(2) PA overcome the opening provisions of ss. 8(2) “subject to any other Act of Parliament”, which, in this matter was the *Unemployment Insurance Act*.

The position taken by the Minister, on behalf of the Unemployment Insurance Commission was based on federal legislation and was beyond challenge.

A rule of statutory interpretation is that a general statute is made to yield to a special statutory provision *generalia specialibus non derogant*.

To order the plaintiff to execute a document styled “consent” for the purpose of accessing the personal information, notwithstanding the prohibition in the *Unemployment Insurance Act* and requirements of the *Privacy Act* would be to choose an interpretation which would nullify Parliament’s legislative intention. If it could be said that the Rule compels disclosure of documents in conflict with the provisions of the *Unemployment Insurance Act* and *Privacy Act*, paramountcy of the federal legislative power governs.

STATISTICAL TABLES 1996-1997

Access to Information – 1996-1997

Disposition of Requests

Requests received		**12,476**
Requests completed (Includes requests brought forward from previous year)	**100.0%**	**12,080**
Disposition of requests completed:		
All disclosed	33.9%	4,096
Some disclosed	34.8%	4,203
No records disclosed – excluded	0.6%	71
No records disclosed – exempted	3.4%	412
Transferred	2.1%	257
Treated informally	3.2%	386
Could not be processed (Reasons include insufficient information provided by applicant, no records exist and abandonment by applicant)	22.0%	2,655

Access to Information – 1996-1997

Source of Requests

Requests received	100.0%	12,476
Business	40.7%	5,083
Public	36.7%	4,572
Media	10.6%	1,320
Organizations	9.2%	1,148
Academics	2.8%	353

Acces to Information – 1996-1997

Ten Institutions Receiving Most Requests

Requests received by all institutions	100.0%	12,476
National Archives	11.2%	1,403
Revenue	10.9%	1,363
Citizenship and Immigration	10.2%	1,277
National Defence	7.6%	942
Health	7.5%	929
Public Works and Government Services	6.7%	836
Fisheries and Oceans	4.6%	574
Royal Canadian Mounted Police	4.1%	516
Transport	3.0%	369
Industry	2.7%	337
Other Departments	31.5%	3,930

Acces to Information – 1996-1997

Time Required to Complete Requests

Requests completed	100.0%	12,080
0 – 30 days	48.0%	5,799
31 – 60 days	18.9%	2,277
61 + days	33.1%	4,004

Access to Information – 1996-1997

Exemptions

Total exemptions	100.0%	10,341
Section 20 – Third party information	28.0%	2,894
Section 19 – Personal information	26.0%	2,637
Section 21 – Operations of government	16.5%	1,714
Section 16 – Law enforcement and investigations	7.4%	769
Section 23 – Solicitor-client privilege	4.9%	513
Section 15 – International affairs and defence	4.8%	497
Section 13 – Information obtained in confidence	4.3%	449
Section 24 – Statutory prohibitions	3.0%	317
Section 18 – Economic interests of Canada	2.0%	211

Section 14 – Federal-provincial affairs	2.0%	207
Section 22 – Testing procedures	0.6%	68
Section 26 – Information to be published	0.3%	35
Section 17 – Safety of individuals	0.2%	30

Access to Information – 1996-1997

Costs and Fees for Operations

Requests completed	**12,080**
Cost of operations	$12,269,190
Cost per request completed	$1,016
Fees collected	$177,089
Fees collected per request completed	$14.66
Fees waived	$64,044
Fees waived per request completed	$5.30

Privacy – 1996-1997

Disposition of Requests

Requests received		**40,548**
Requests completed (Includes requests brought forward from previous year)	**100.0%**	**40,901**
Disposition of requests completed:		
All disclosed	65.0%	26,591
Some disclosed	21.6%	8,851
No records disclosed – excluded	0.0%	10
No records disclosed – exempted	1.0%	341
Could not be processed (Reasons include insufficient information provided by applicant, no records exist and abandonment by applicant)	12.4%	5,108

Privacy – 1996-1997

Five Institutions Receiving Most Requests

Requests received by all institutions	100.0%	40,548
National Defence	34.8%	14,123
Human Resources Development	15.4%	6,245
Correctional Service	15.1%	6,124
National Archives	9.3%	3,767
Citizenship and Immigration	6.9%	2,789
Other Departments	18.5%	7,500

Privacy – 1996-1997

Time Required to Complete Requests

Requests completed	100.0%	40,901
0 – 30 days	48.7%	19,902
31 – 60 days	19.4%	7,939
61 + days	31.9%	13,060

Privacy – 1996-1997

Exemptions

Total exemptions	100.0%	16,399
Section 26 – Information about another individual	52.7%	8,634
Section 22 – Law enforcement and investigation	20.1%	3,298
Section 19 – Personal information obtained in confidence	13.3%	2,175
Section 24 – Individuals sentenced for an offence	4.6%	749
Section 18 – Exempt bank	3.3%	543
Section 21 – International Affairs and defence	2.6%	430
Section 27 – Solicitor-client privilege	2.1%	349
Section 23 – Security clearance	0.8%	131
Section 25 – Safety of individuals	0.4%	65
Section 28 – Medical record	0.1%	18
Section 20 – Federal-provincial affairs	0.0%	7

Privacy – 1996-1997

Costs and Fees for Operations

Requests completed	**40,901**
Cost of operations	$9,274,669
Cost per request completed	$227

STATISTICAL TABLES 1983-1997

Access to Information – 1983-1997

Disposition of Requests

Requests received		**119,268**
Requests completed (Includes requests brought forward from previous year)	**100.0%**	**115,202**
Disposition of requests completed:		
All disclosed	33.3%	38,335
Some disclosed	35.2%	40,533
No records disclosed – excluded	0.7%	782
No records disclosed – exempted	3.4%	3,927
Transferred	2.1%	2,499
Treated informally	6.2%	7,132
Could not be processed (Reasons include insufficient information provided by applicant, no records exist and abandonment by applicant)	19.1%	21,994

Access to Information – 1983-1997

Time Required to Complete Requests

Requests completed	100.0%	115,202
0 – 30 days	57.8%	66,583
31 – 60 days	18.1%	20,827
61 + days	24.1%	27,792

Access to Information – 1983-1997

Costs and Fees for Operations

Requests completed	115,202
Cost of operations	$98,854,431
Cost per request completed	$858
Fees collected	$1,611,750
Fees collected per request completed	$13.99
Fees waived	$517,196
Fees waived per request completed	$4.49

Privacy – 1983-1997

Disposition of Requests

Requests received		**592,034**
Requests completed (Includes requests brought forward from previous year)	**100.0%**	**584,896**
Disposition of requests completed:		
All disclosed	62.1%	363,044
Some disclosed	23.7%	138,618
No records disclosed – excluded	0.0%	94
No records disclosed – exempted	0.9%	5,020
Could not be processed (Reasons include insufficient information provided by applicant, no records exist and abandonment by applicant)	13.3%	78,120

Privacy – 1983-1997

Time Required to Complete Requests

Requests completed	**100.0%**	**584,896**
0 – 30 days	60.2%	352,318
31 – 60 days	22.1%	129,102
61 + days	17.7%	103,476

Privacy – 1983-1997

Costs and Fees for Operations

Requests completed	**584,896**
Cost of operations	$88,952,005
Cost per request completed	$152

Access to Information and Privacy Coordinators

Agricultural Products Board
see Agriculture and Agri-Food Canada

Agricultural Stabilization Board
see Agriculture and Agri-Food Canada

Agriculture and Agri-Food Canada
Victor Desroches
Sir John Carling Bldg.
930 Carling Avenue, Room 841
Ottawa, Ontario
K1A 0C5
TEL: (613) 759-6765
FAX: (613) 759-6547

Atlantic Canada Opportunities Agency
Claudia Gaudet
Blue Cross Centre
644 Main Street, 3rd Floor
P.O. Box 6051
Moncton, New Brunswick
E1C 9J8
TEL: (506) 851-3845 or
1-800-561-7862
FAX: (506) 851-7403

Atlantic Pilotage Authority Canada
M.R. McGrath
Purdy's Wharf, Tower 1
1959 Upper Water Street
Suite 1402
Halifax, Nova Scotia
B3J 3N2
TEL: (902) 426-2550
FAX: (902) 426-4004

Atomic Energy Control Board
Bernie Richard
280 Slater Street
P.O. Box 1046, Station B
Ottawa, Ontario
K1P 5S9
TEL: (613) 996-9997
FAX: (613) 995-5086

Bank of Canada
Ted Requard
234 Wellington Street, 2nd Floor
Ottawa, Ontario
K1A 0G9
TEL: (613) 782-8537
FAX: (613) 782-7003

Bureau of Pension Advocates
see Veterans Affairs Canada

Business Development Bank of Canada
Robert D. Annett
5 Place Ville Marie, Suite 300
Montreal, Quebec
H3B 5E7
TEL: (514) 283-3554
FAX: (514) 283-9731

Canada Council
Irène Boilard
350 Albert Street
P.O. Box 1047
Ottawa, Ontario
K1P 5V8
TEL: (613) 566-4414 Ext 4261
FAX: (613) 566-4411

Canada Deposit Insurance Corporation
Claudia Morrow
50 O'Connor Street, 17th Floor
Ottawa, Ontario
K1P 5W5
TEL: (613) 947-0268
FAX: (613) 996-6095

Canada Information Office
Jodi Redmond
155 Queen Street, 5th Floor
Ottawa, Ontario
K1P 6L1
TEL: (613) 992-1692
FAX: (613) 992-8350

Canada Labour Relations Board
Ruth Smith
240 Sparks Street, 4th Floor
C.D. Howe Bldg., West Tower
Ottawa, Ontario
K1A 0X8
TEL: (613) 947-5441
FAX: (613) 947-5407

Canada Mortgage and Housing Corporation
Doug Tyler
700 Montreal Road, Room C2-218A
Ottawa, Ontario
K1A 0P7
TEL: (613) 748-2892
FAX: (613) 748-4098

Canada-Newfoundland Offshore Petroleum Board
Jim Doyle
140 Water Street
TD Place, 5th Floor
St. John's, Newfoundland
A1C 6H6
TEL: (709) 778-1464
FAX: (709) 778-1473

Canada-Nova Scotia Offshore Petroleum Board
Jim Dickey
1791 Barrington Street
TD Centre, 6th Floor
Halifax, Nova Scotia
B3J 3K9
TEL: (902) 422-5588
FAX: (902) 422-1799

Canada Ports Corporation
Rick Shields
99 Metcalfe Street, 9th Floor
Ottawa, Ontario
K1A 0N6
TEL: (613) 957-6760
FAX: (613) 957-6705

Canada Post Corporation
Richard A. Sharp
2701 Riverside Drive
Suite N0643
Ottawa, Ontario
K1A 0B1
TEL: (613) 734-6871
FAX: (613) 734-7329

Canadian Centre for Management Development
Carole Jolicoeur
373 Sussex Drive, Room B207
Ottawa, Ontario
K1N 8V4
TEL: (613) 947-9338
FAX: (613) 947-3668

Canadian Centre for Occupational Health and Safety
Brian Hutchings
250 Main Street East
Hamilton, Ontario
L8N 1H6
TEL: (905) 572-4401
FAX: (905) 572-2206

Canadian Commercial Corporation
F.O. Kelly
50 O'Connor Street, 11th Floor
Ottawa, Ontario
K1A 0S6
TEL: (613) 996-0116
FAX: (613) 947-3903

Canadian Cultural Property Export Review Board
David A. Walden
15 Eddy Street, 3rd Floor
Hull, Quebec
K1A 0M5
TEL: (819) 997-7750
FAX: (819) 997-7757

Canadian Dairy Commission
Suzanne Perras
1525 Carling Avenue, Suite 300
Ottawa, Ontario
K1A 0Z2
TEL: (613) 998-9490 Ext 121
FAX: (613) 998-4492

Canadian Environmental Assessment Agency
Suzanne Latour
200 Sacré-Coeur Boulevard
13th Floor
Hull, Quebec
K1A 0H3
TEL: (819) 953-5537
FAX: (819) 994-1469

Canadian Film Development Corporation
Michel Montagne
Tour de la Banque Nationale
600 Gauchetiere St. West, 14th Floor
Montreal, Quebec
H3B 4L8
TEL: (514) 283-6363
FAX: (514) 283-8212

Canadian Forces
see National Defence

Canadian Government Standards Board
see Public Works and Government Services Canada

Canadian Grain Commission
see Agriculture and Agri-Food Canada

Canadian Heritage
E.W. Aumand
25 Eddy Street, Room 1496
Hull, Québec
K1A 0M5
TEL: (819) 997-2894
FAX: (819) 953-9524

Canadian Human Rights Commission
Lucie Veillette
Place de Ville, Tower A
320 Queen Street, 15th Floor
Ottawa, Ontario
K1A 1E1
TEL: (613) 943-9505
FAX: (613) 941-6810

Canadian International Development Agency
Madeleine Fortin
Place du Centre, 12th floor
200 Promenade du Portage
Hull, Quebec
K1A 0G4
TEL: (819) 997-0849
FAX: (819) 953-3352

Canadian International Trade Tribunal
Suzanne Grimes
Standard Life Centre
333 Laurier Avenue West, 17th Floor
Ottawa, Ontario
K1A 0G7
TEL: (613) 993-4717
FAX: (613) 998-1322

Canadian Museum of Civilization
Louise Dubois
100 Laurier Street
P.O. Box 3100, Station B
Hull, Quebec
J8X 4H2
TEL: (819) 776-7115
FAX: (819) 776-7122

Canadian Museum of Nature
Robert Dupuis
P.O. Box 3443, Station D
Ottawa, Ontario
K1P 6P4
TEL: (613) 364-4013
FAX: (613) 364-4029

Canadian Pension Commission
see Veterans Affairs Canada

Canadian Polar Commission
Whit Fraser
360 Albert Street
Constitution Square, Suite 1710
Ottawa, Ontario
K1R 7X7
TEL: (613) 943-8605
FAX: (613) 943-8607

Canadian Radio-television and Telecommunications Commission
Betty MacPhee
Terrasses de la Chaudiere
1 Promenade du Portage, 5th Floor
Hull, Quebec
K1A 0N2
TEL: (819) 994-5366
FAX: (819) 994-0218

Canadian Security Intelligence Service
Garnet Barlow
P.O. Box 9732, Station "T"
Ottawa, Ontario
K1G 4G4
TEL: (613) 231-0532
FAX: (613) 842-1271

Canadian Space Agency
Sylvie Garbusky
6767 route de l'Aéroport
Saint-Hubert, Quebec
J3Y 8Y9
TEL: (514) 926-4866
FAX: (514) 926-4878

Canadian Transportation Agency
John Parkman
15 Eddy Street
Jules Léger Building, 16th Floor
Hull, Québec
K1A 0N9
TEL: (819) 994-2564
FAX: (819) 997-6727

Canadian Wheat Board
Deborah Harri
423 Main Street
P.O. Box 816, Station Main
Winnipeg, Manitoba
R3C 2P5
TEL: (204) 983-0239
FAX: (204) 983-0341

Citizenship and Immigration Canada
Janet Brooks
300 Slater Street
Journal Tower North
3rd Floor, Section "D"
Ottawa, Ontario
K1A 1L1
TEL: (613) 957-6512
FAX: (613) 957-6517

Copyright Board Canada
Jaï Bellehumeur
56 Sparks Street, Room 800
Ottawa, Ontario
K1A 0C9
TEL: (613) 952-8628
FAX: (613) 952-8630

Correctional Investigator Canada, The
J. Longo
275 Slater Street, Room 402
Ottawa, Ontario
K1P 5H9
TEL: (613) 990-2692
FAX: (613) 990-9091

Correctional Service of Canada
Margo E. Milligan
340 Laurier Avenue West
Sir Wilfrid Laurier Building
1st Floor, Section C
Ottawa, Ontario
K1A 0P9
TEL: (613) 992-8248
FAX: (613) 995-4412

Custodian of Enemy Property
Public Works and Government
Services Canada

Defence Construction Canada
Sue Greenfield
Place de Ville, Tower B
112 Kent Street, 17th Floor
Ottawa, Ontario
K1A 0K3
TEL: (613) 998-0998
FAX: (613) 998-1004

Department of Finance Canada
Donald Forgues
L'Esplanade Laurier, East Tower
140 O'Connor Street, 21st Floor
Ottawa, Ontario
K1A 0G5
TEL: (613) 992-6923
FAX: (613) 947-8331

Department of Justice Canada
Anne Brennan
239 Wellington Street, Room 34
Ottawa, Ontario
K1A 0H8
TEL: (613) 952-8361
FAX: (613) 957-2303

Director of Soldier Settlement
see Veterans Affairs Canada

Director Veterans' Land Act, The
see Veterans Affairs Canada

Energy Supplies Allocation Board
see Natural Resources Canada

Environment Canada
Jean Bilodeau
10 Wellington Street
Les Terrasses de la Chaudiere
4th Floor, North Tower
Hull, Quebec
K1A 0H3
TEL: (819) 997-2992
FAX: (819) 997-1781

Export Development Corporation
Serge Picard
151 O'Connor Street, 6th Floor
Ottawa, Ontario
K1A 1K3
TEL: (613) 598-2899
FAX: (613) 237-2690

Farm Credit Corporation Canada
Jay Henryk
1800 Hamilton Street
P.O. Box 4320
Regina, Saskatchewan
S4P 4L3
TEL: (306) 780-8679
FAX: (306) 780-8641

Federal Mortgage Exchange Corporation
see Department of Finance Canada

Federal Office of Regional Development (Quebec)
Joane Simon
800 Place Victoria Tower
Suite 3800, P.O. Box 247
Montreal, Québec
H4Z 1E8
TEL: (514) 283-8418
FAX: (514) 283-9679

Federal-Provincial Relations Office
see Privy Council Office

Fisheries and Oceans
Scott Crosby
200 Kent Street, Station 530
Ottawa, Ontario
K1A 0E6
TEL: (613) 993-2937
FAX: (613) 998-1173

Fisheries and Oceans Research Advisory Council
see Fisheries and Oceans

Fisheries Prices Support Board
see Fisheries and Oceans

Foreign Affairs and International Trade Canada
Daniel Daley
125 Sussex Drive
Lester B. Pearson Building
Tower D, 1st Floor
Ottawa, Ontario
K1A 0G2
TEL: (613) 992-1487 or 992-1425
FAX: (613) 995-0116

Forestry Canada
see Natural Resources Canada

Freshwater Fish Marketing Corporation
Millie Smith
1199 Plessis Road
Winnipeg, Manitoba
R2C 3L4
TEL: (204) 983-6461
FAX: (204) 983-6497

Great Lakes Pilotage Authority Canada
Robert Lemire
202 Pitt Street
P.O. Box 95
Cornwall, Ontario
K6H 5R9
TEL: (613) 933-2991
FAX: (613) 932-3793

Hazardous Materials Information Review Commission
Sharon Watts
200 Kent Street, Suite 9000
Ottawa, Ontario
K1A 0M1
TEL: (613) 993-4472
FAX: (613) 993-4686

Health Canada
J.A. Schriel
Brooke Claxton Building (0909D)
Room 967D
Ottawa, Ontario
K1A 0K9
TEL: (613) 957-3051
FAX: (613) 941-4541

Historic Sites and Monuments Board of Canada
Larry Friend
25 Eddy Street, 5th Floor
Hull, Québec
K1A 0M5
TEL: (819) 953-6668
FAX: (819) 953-4909

Human Resources Development Canada
Jean Dupont
140 Promenade du Portage
Phase IV, 2nd Floor
Hull, Québec
K1A 0J9
TEL: (819) 953-3384
FAX: (819) 953-0659

Immigration and Refugee Board
Sergio Poggione
222 Nepean Street, 7th Floor
Ottawa, Ontario
K1A 0K1
TEL: (613) 995-3514
FAX: (613) 996-9305

Indian and Northern Affairs Canada
Marcel Gauthier
Les Terrasses de la Chaudiere
North Tower, Room 517
10 Wellington Street
Hull, Quebec
K1A 0H4
TEL: (819) 997-8277
FAX: (819) 953-5492

Industry Canada
Pierre Trottier
235 Queen Street
6th Floor West, Room 643D
Ottawa, Ontario
K1A 0H5
TEL: (613) 954-2752
FAX: (613) 941-3085

International Centre for Human Rights and Democratic Development
Marie-France Cloutier
63 De Brésoles, 1st Floor
Montreal, Québec
H2E 2R7
TEL: (514) 283-6073
FAX: (514) 496-9676

International Development Research Centre
Raffaella Zumpano
250 Albert Street
P.O. Box 8500
Ottawa, Ontario
K1G 3H9
TEL: (613) 236-6163, Ext 2123
FAX: (613) 565-8212

Jacques Cartier and Champlain Bridges Incorporated
Lorraine Versailles
Complexe Bienville, Room 700
1010 De Sérigny
Longueuil, Quebec
J4K 5G7
TEL: (514)651-8771
FAX: (514)677-6912

Laurentian Pilotage Authority Canada
Nicole Sabourin
715 Victoria Square, 6th Floor
Stock Exchange Tower
P.O. Box 680
Montreal, Québec
H4Z 1J9
TEL: (514) 496-1805
FAX: (514) 496-2409

Law Commission of Canada
Rodrick Macdonald
Trebla Building, 11th Floor
473 Albert Street
Ottawa, Ontario
K1A 0H8
TEL: (613)952-6612
FAX: (613)957-2491

Medical Research Council of Canada
Guy D'Aloisio
1600 Scott Street
Holland Cross
Tower B, 5th Floor
Ottawa, Ontario
K1A 0W9
TEL: (613) 954-1946
FAX: (613) 954-1800

Merchant Seamen Compensation Board
see Human Resources Development Canada

National Archives of Canada
Françoise Houle
395 Wellington Street, Room 128
Ottawa, Ontario
K1A 0N3
TEL: (613) 996-7241
FAX: (613) 995-0919

National Arts Centre
Danielle Robinson
P.O. Box 1534, Station B
Ottawa, Ontario
K1P 5W1
TEL: (613) 947-7000 Ext 542
FAX: (613) 943-1402

National Battlefields Commission
Michel Leullier
390 de Bernières Avenue
Québec, QC
G1R 2L7
TEL: (418) 648-3506
FAX: (418) 648-3638

National Capital Commission
Ginette Grenier
40 Elgin Street, Suite 202
Ottawa, Ontario
K1P 1C7
TEL: (613) 239-5198
FAX: (613) 239-5361

National Defence
B.J. Petzinger
101 Colonel By Drive
North Tower, 6th Floor
Ottawa, Ontario
K1A 0K2
TEL: (613) 995-8393
FAX: (613) 995-5777

National Energy Board
Denis Tremblay
311 – Sixth Avenue South West
Calgary, Alberta
T2P 3H2
TEL: (403) 299-2717
FAX: (403) 292-5503

National Farm Products Council
Pierre Bigras
Martel Building
270 Albert Street, 13th Floor
P.O. Box 3430, Station D
Ottawa, Ontario
K1P 6L4
TEL: (613) 995-8840
FAX: (613) 995-2097

National Film Board of Canada
Geneviève Cousineau
P.O. Box 6100, Station A
Montreal, Quebec
H3C 3H5
TEL: (514) 283-9028
FAX: (514) 496-1646

National Gallery of Canada
Yves Dagenais
380 Sussex Drive
Ottawa, Ontario
K1N 9N4
TEL: (613) 991-0040
FAX: (613) 990-9810

National Library of Canada
Rolande Blair
395 Wellington Street
Ottawa, Ontario
K1A 0N4
TEL: (613) 996-2892
FAX: (613) 996-3573

National Museum of Science and Technology
Graham Parsons
2421 Lancaster Road
P.O. Box 9724, Station T
Ottawa, Ontario
K1G 5A3
TEL: (613) 991-3033
FAX: (613) 990-3635

National Parole Board
Claudette Désormeaux
340 Laurier Avenue West,
Ottawa, Ontario
K1A 0R1
TEL: (613) 954-5946
FAX: (613) 957-3241

National Research Council Canada
Huguette Brunet
Building M-58, Montreal Road Campus
Room W-314
Ottawa, Ontario
K1A 0R6
TEL: (613) 990-6111
FAX: (613) 991-0398

National Round Table on the Environment and the Economy
Gene Nyberg
Canada Building, Suite 200
344 Slater Street
Ottawa, Ontario
K1R 7Y3
TEL: (613)995-7581
FAX: (613)992-7385

Natural Resources Canada
Claude Ménard
580 Booth Street, 3rd Floor
Ottawa, Ontario
K1A 0E4
TEL: (613) 947-3309
FAX: (613) 947-7785

Natural Sciences and Engineering Research Council of Canada
Victor Wallwork
350 Albert Street, 13th Floor
Ottawa, Ontario
K1A 1H5
TEL: (613) 995-6214
FAX: (613) 992-5337

Northern Pipeline Agency Canada
C.F. Gilhooly
Lester B. Pearson Building
125 Sussex Drive
Ottawa, Ontario
K1A 0G2
TEL: (613) 993-7466
FAX: (613) 998-8787

Northwest Territories Water Board
Vicki Losier
P.O. Box 1500
Yellowknife, Northwest Territories
X1A 2R3
TEL: (403) 669-2772
FAX: (403) 669-2719

Office of the Auditor General of Canada
Susan Kearney
240 Sparks Street, 11th Floor
Ottawa, Ontario
K1A 0G6
TEL: (613) 995-3708
FAX: (613) 947-9556

Office of the Chief Electoral Officer
Jacques Girard
257 Slater Street, Room 9-104
Ottawa, Ontario
K1A 0M6
TEL: (613) 990-5596
FAX: (613) 993-5880

Office of the Commissioner of Official Languages
Louise Dubé
110 O'Connor Street, 13th Floor
Ottawa, Ontario
K1A 0T8
TEL: (613) 996-6036
FAX: (613) 993-5082

Office of the Comptroller General
see Treasury Board of Canada

Office of the Inspector General of the Canadian Security Intelligence Service
Martin Somberg
340 Laurier Avenue West
Sir Wilfrid Laurier Building, 8th Floor
Ottawa, Ontario
K1A 0P8
TEL: (613) 993-7204
FAX: (613) 990-8303

Office of the Superintendent of Financial Institutions Canada
Allan Shusterman
255 Albert Street, 15th Floor
Ottawa, Ontario
K1A 0H2
TEL: (613) 990-8031
FAX: (613) 952-5031

Pacific Pilotage Authority Canada
Bruce Chadwick
300 – 1199 West Hastings Street
Vancouver, British Columbia
V6E 4G9
TEL: (604) 666-6771
FAX: (604) 666-1647

Patented Medicines Prices Review Board
Sylvie Dupont-Kirby
Standard Life Centre
333 Laurier Avenue West
Box L40, Suite 1400
Ottawa, Ontario
K1P 1C1
TEL: (613) 954-8299
FAX: (613) 952-7626

Pension Appeals Board
Mina McNamee
381 Kent Street, Room 327
Ottawa, Ontario
K2P 2A8
TEL: (613) 995-0612
FAX: (613) 995-6834

Petroleum Monitoring Agency Canada
see Natural Resources Canada

Prairie Farm Rehabilitation Administration
see Agriculture and Agri-Food Canada

Privy Council Office
Ciuineas Boyle
85 Sparks Street
Blackburn Building, Room 633
Ottawa, Ontario
K1A 0A3
TEL: (613) 957-5210
FAX: (613) 991-4706

Procurement Review Board of Canada
see Canadian International Trade Tribunal

Public Service Commission of Canada
Amelita A. Armit
L'Esplanade Laurier, West Tower
300 Laurier Avenue West, Room 1954
Ottawa, Ontario
K1A 0M7
TEL: (613) 992-2425
FAX: (613) 992-7519

Public Service Staff Relations Board
Monique Montgomery
C.D. Howe Bldg, West Tower
240 Sparks Street, 6th Floor
P.O. Box 1525, Station B
Ottawa, Ontario
K1P 5V2
TEL: (613) 990-1757
FAX: (613) 990-1849

Public Works and Government Services Canada
Ghislain St-Jacques
Place du Portage, Phase III, 15A2
11 Laurier Street
Hull, Québec
K1A 0S5
TEL: (819) 956-1816
FAX: (819) 994-2119

Regional Development Incentives Board
see Industry Canada

Revenue Canada
Gilles Gaignery
25 Nicholas Street
Albion Tower, 14th Floor
Ottawa, Ontario
K1A 0L5
TEL: (613) 957-8819
FAX: (613) 941-9395

Royal Canadian Mint
Marguerite Nadeau
320 Sussex Drive
Ottawa, Ontario
K1A 0G8
TEL: (613) 993-1732
FAX: (613) 952-8342

Royal Canadian Mounted Police
Supt. André Thouin
1200 Vanier Parkway
Ottawa, Ontario
K1A 0R2
TEL: (613) 993-5162
FAX: (613) 993-5080

Royal Canadian Mounted Police External Review Committee
Bernard Cloutier
60 Queen Street, Room 513
Ottawa, Ontario
K1P 5Y7
TEL: (613) 990-1860
FAX: (613) 990-8969

Royal Canadian Mounted Police Public Complaints Commission
Joanna Leslie
P.O. Box 3423, Postal Station D
Ottawa, Ontario
K1P 6L4
TEL: (613) 952-1302
FAX: (613) 952-8045

Seaway International Bridge Corporation Ltd
see The St. Lawrence Seaway Authority

Security Intelligence Review Committee
Madeleine DeCarufel
122 Bank Street
Jackson Building, 4th Floor
Ottawa, Ontario
K1P 5N6
TEL: (613) 990-8441
FAX: (613) 990-5230

Social Sciences and Humanities Research Council of Canada
Hélène Price
350 Albert Street, 11th Floor
Constitution Square, Tower 2
Ottawa, Ontario
K1P 6G4
TEL: (613) 992-0562
FAX: (613) 992-1787

Solicitor General Canada – Ministry Secretariat
Duncan Roberts
340 Laurier Avenue West
Sir Wilfrid Laurier Bldg.
Ottawa, Ontario
K1A 0P8
TEL: (613) 991-2931
FAX: (613) 990-9077

St. Lawrence Seaway Authority
Norman B. Willans
Place de Ville
Tower B, Suite 500
112 Kent Street
Ottawa, Ontario
K1P 5P2
TEL: (613) 598-4605
FAX: (613) 598-4620

Standards Council of Canada
Susan MacPherson
45 O'Connor Street, Suite 1200
Ottawa, Ontario
K1P 6N7
TEL: (613) 238-3222
FAX: (613) 995-4564

Statistics Canada
Louise Desramaux
R.H. Coats Bldg., 25th floor
Tunney's Pasture
Ottawa, Ontario
K1A 0T6
TEL: (613) 951-9349
FAX: (613) 951-3825

Status of Women Canada
Céline Champagne
360 Albert Street, Suite 700
Ottawa, Ontario
K1A 1C3
TEL: (613) 995-4008
FAX: (613) 957-3359

Transport Canada
Duncan Jameson
Place de Ville, Tower C
330 Sparks Street, 26th floor
Ottawa, Ontario
K1A 0N5
TEL: (613) 993-6162
FAX: (613) 991-6594

Transportation Safety Board of Canada
Marie Gervais
Place du Centre, 4th Floor
200 Promenade du Portage
Hull, Québec
K1A 1K8
TEL: (819) 994-8021
FAX: (819) 997-2239

Treasury Board of Canada Secretariat
Michael Calcott
L'Esplanade Laurier, East Tower
140 O'Connor Street, 9th Floor
Ottawa, Ontario
K1A 0R5
TEL: (613) 941-8682
FAX: (613) 998-9071

Veterans Affairs Canada
Donna Cawley
Dominion Building
97 Queen Street, Room 201
P.O. Box 7700
Charlottetown, Prince Edward Island
C1A 8M9
TEL: (902) 566-8609
FAX: (902) 368-0496

Veterans Appeal Board Canada
see Veterans Affairs Canada

Western Economic Diversification Canada
Bob Landry
200 Kent Street, 8th Floor
P.O. Box 2128, Station D
Ottawa, Ontario
K1P 5W3
TEL: (613) 952-9383
FAX: (613) 952-7188

Yukon Territory Water Board
Judi Doering
200 Range Road, Suite 106
Whitehorse, Yukon
Y1A 3V1
TEL: (403) 667-3980
FAX: (403) 668-3628