

# **ANNOTATED PRIVACY ACT**

***(CURRENT AS OF SEPTEMBER 30, 1999)***

**Information Law and Privacy Section  
Justice Canada**

## FOREWORD

It is our pleasure to provide you with our revised annotations of the *Privacy Act*, R.S., 1985, c. P-21. We ask you to note that the annotations have been placed in chronological order in most instances, so that you may easily follow the evolution of the caselaw. However, we have also made an effort to group some judicial decisions together, even when they are not in chronological order, where such cases are inter-related or where they are contradictory.

**The annotations of the *Privacy Act* are current as of September 30, 1999. The legislation, including the Schedule, is also current as of September 30, 1999.**

The annotations are not subject to solicitor-client privilege and may be distributed freely.

Readers are reminded that this administrative consolidation of the *Privacy Act* has been prepared for convenience of reference only and has no official sanction.

You are encouraged to notify us of any errors or omissions.

Information Law and Privacy Section  
Justice Canada  
284 Wellington Street  
Ottawa, Ontario  
K1A 0H8  
e-mail: [ilap-dirp@justice.gc.ca](mailto:ilap-dirp@justice.gc.ca)

# ANNOTATED PRIVACY ACT

*(CURRENT AS OF SEPTEMBER 30, 1999)*

## CONTENTS

<b>CONTENTS</b>	<b>3</b>
<b>ANNOTATED PRIVACY ACT</b>	<b>13</b>
<b>SECTION 1</b>	<b>13</b>
<b>SECTION 2</b>	<b>13</b>
JURISPRUDENCE	13
Transcript of a test	13
Principles of the <i>Privacy Act</i>	14
Interpretation of exemptions	14
No paramountcy of the <i>Access to Information Act</i> over the <i>Privacy Act</i> or vice versa	14
<b>SECTION 3</b>	<b>15</b>
JURISPRUDENCE	17
Transcript of a test	17
Scope of the definition of “personal information”	17
Corporation not identifiable individual	17
Interpretation of opening paragraph of section 3	17
Onus of proof	18
Social insurance numbers / Absence of legislation not contravening <i>Charter</i>	18
Paragraph 3(b)	18
Information about an identifiable individual / Statements of a small group	18
Employment history of government employees	19
Paragraph 3(c)	19
Personal opinions or views	19
Identification number of government employees	19
Paragraph 3(e)	20
Personal opinions or views	20
Paragraph 3(g)	20
Performance of government employees	20
Views or opinions of other individuals	20
Paragraph 3(i)	20
Names of medical practitioners who have had their prescribing privileges restricted or revoked	20
Names of government employees / Sign-in logs	21
Personal opinions or views	21
Disclosure of names alone	21
Names of MPs receiving pensions	22
Paragraph 3(j)	22
Performance of government employees	22

Names, identification numbers and signatures / Sign-in logs / Overtime	22
Information concerning an offence committed by a Canadian soldier while on service	23
Remuneration of chairmen, heads and presiding officials	23
Subparagraph 3(j)(iii)	24
Hours spent at the workplace	24
Information relating to position / Job description	24
Information relating to position / Qualitative as opposed to quantitative	24
Subparagraph 3(j)(v)	24
Views / “Course of employment” / Harassment	24
Paragraph 3(k)	25
Versions inconsistent with each other	25
Security classifications of temporary help	25
Paragraph 3(l)	25
Information relating to the granting of a licence or permit	25
Names, addresses and rental charges of tenants	25
Discretionary benefit conferred by someone other than government	26
Remuneration of chairmen, heads and presiding officials	26
<b>SECTION 4</b>	<b>26</b>
JURISPRUDENCE	26
Photographs / Inmates	26
<b>SECTION 5</b>	<b>27</b>
JURISPRUDENCE	27
Notification of collection purpose not required prior to disclosure of information	27
<b>SECTION 6</b>	<b>27</b>
JURISPRUDENCE	28
Draft documents / Retention	28
<b>SECTION 7</b>	<b>28</b>
JURISPRUDENCE	29
Disclosure of personal information to another section of department	29
<b>SECTION 8</b>	<b>29</b>
JURISPRUDENCE	31
Disclosure of personal information to another section of department	31
Information relating to others	31
Disclosure	31
<i>Unemployment Insurance Act</i> and <i>PA</i>	31
Production for litigation purposes	31
Principles of section 8	32
Subsection 8(2)	32
Interpretation of subs. 8(2)	32
No remedy for improper disclosure	32
Notification of collection purpose not required prior to disclosure of information	32
Paragraph 8(2)(a)	33
Financial information re: Indian band	33
Relationship between natural justice and <i>Privacy Act</i>	33
Consistent use / Immigration purposes	33
Natural justice and consistent use	33
Disclosure of employee information to bargaining agent	34
Paragraph 8(2)(b)	34
Datamatch / Para. 8(2)(b) <i>Privacy Act</i> and s. 108 <i>Customs Act</i>	34
No requirement that disclosure be expressly authorized in Act of Parliament	35
Paragraph 8(2)(k)	35

Definition of “aboriginal peoples”	35
Paragraph 8(2)(m)	35
Amount of MPs’ pensions / Public interest in disclosure	35
Subparagraph 8(2)(m)(i)	35
Views and opinions expressed by a union official / Preparation of submissions	35
Names, addresses and rental charges of tenants	36
Remuneration of chairmen, heads and presiding officials	36
Information concerning an offence committed by a Canadian soldier while on service	36
Private vs public interests	37
Exercising discretion	37
Exercise of discretion--no <i>de novo</i> review	37
Burden of proof regarding public interest	37
No obligation to consider para. 8(2)(m) grounds	38
<b>SECTION 9</b>	<b>38</b>
<b>SECTION 10</b>	<b>38</b>
<b>SECTION 11</b>	<b>39</b>
<b>SECTION 12</b>	<b>40</b>
JURISPRUDENCE	40
Qualifications of requester	40
<i>Privacy Act</i> subordinate to <i>Charter</i>	41
Extension of time	41
Notes taken by Board members not “under the control”	41
<b>SECTION 13</b>	<b>41</b>
JURISPRUDENCE	42
Extent of search	42
<b>SECTION 14</b>	<b>42</b>
JURISPRUDENCE	42
Jurisdiction of Court premised on complaint to Commissioner	42
<b>SECTION 15</b>	<b>43</b>
JURISPRUDENCE	43
Jurisdiction of Court premised on complaint to Commissioner	43
<b>SECTION 16</b>	<b>43</b>
JURISPRUDENCE	44
Head bound by original exemption	44
No indication as to whether information exists	44
Departmental practice / No fettering of discretion	44
Whether deemed refusal proper subject-matter of complaint	45
<b>SECTION 17</b>	<b>45</b>
JURISPRUDENCE	46
Means of access	46
<b>SECTION 18</b>	<b>46</b>
JURISPRUDENCE	47
Designating order	47
Departmental practice to refuse to indicate existence of personal information	47
<b>SECTION 19</b>	<b>47</b>

JURISPRUDENCE	48
Information received in confidence re-iterated in federally-generated document	48
No obligation to seek consent	48
<b>SECTION 20</b>	<b>48</b>
JURISPRUDENCE	48
<b>SECTION 21</b>	<b>48</b>
JURISPRUDENCE	49
Scope of the expression "subversive or hostile activities"	49
Nature of prejudice	49
Timing of injury	49
Injury test / Criterion	49
<b>SECTION 22</b>	<b>50</b>
JURISPRUDENCE	50
Paragraph 22(1)(a)	50
Investigative body / Lawful investigations	50
Paragraph 22(1)(b)	51
Information relating to existence or nature of investigation	51
Protection of informer's identity	51
Information obtained or prepared in course of investigation	51
Content of affidavit to support exemption	51
Injury test	52
Names of informants	52
Release of documents more than 20 years old	52
"Conduct of lawful investigations" / Injury to specific investigation	52
Undertakings of confidentiality not overriding <i>Privacy Act</i>	53
Specific investigation over	53
Information obtained during investigation subject to disclosure	53
Subsection 22(2)	54
Release authorized after termination of agreement which prohibited release of the information	54
RCMP information cannot be disclosed for the purpose of verifying whether the information is accurate	54
Subsection 22(3)	54
Definition of "investigation"	54
<b>SECTION 23</b>	<b>55</b>
<b>SECTION 24</b>	<b>55</b>
JURISPRUDENCE	55
Paragraph 24(b)	55
Due respect for confidentiality	55
<b>SECTION 25</b>	<b>56</b>
JURISPRUDENCE	56
<b>SECTION 26</b>	<b>56</b>
JURISPRUDENCE	56
Right of others to privacy of their own data	56
Names of informants	57
No obligation to consider para. 8(2)(m) grounds	57
Right to one's personal information not paramount	57
<b>SECTION 27</b>	<b>57</b>
JURISPRUDENCE	57

<b>SECTION 28</b>	<b>58</b>
<b>SECTION 29</b>	<b>58</b>
JURISPRUDENCE	59
Jurisdiction of Court premised on complaint to Commissioner / Whether deemed refusal proper subject-matter of complaint	59
<b>SECTION 30</b>	<b>59</b>
<b>SECTION 31</b>	<b>59</b>
<b>SECTION 32</b>	<b>60</b>
JURISPRUDENCE	60
<b>SECTION 33</b>	<b>60</b>
JURISPRUDENCE	60
<b>SECTION 34</b>	<b>60</b>
<b>SECTION 35</b>	<b>61</b>
JURISPRUDENCE	62
<b>SECTION 36</b>	<b>62</b>
<b>SECTION 37</b>	<b>63</b>
<b>SECTION 38</b>	<b>63</b>
<b>SECTION 39</b>	<b>64</b>
<b>SECTION 40</b>	<b>64</b>
<b>SECTION 41</b>	<b>64</b>
JURISPRUDENCE	64
Improper disclosure of personal information	64
Court's authority regarding exempt banks	65
Failure to complain	65
Privacy Commissioner as respondent	65
Release authorized after termination of agreement which prohibited release of the information	65
No recourse to prerogative writs	66
No remedy for improper disclosure	66
Role of Court where documents non existent	66
Cross-examination of affiant	66
Jurisdiction of Court premised on complaint to Commissioner / Whether deemed refusal proper subject-matter of complaint	66
<b>SECTION 42</b>	<b>67</b>
JURISPRUDENCE	67
<b>SECTION 43</b>	<b>67</b>
<b>SECTION 44</b>	<b>67</b>
<b>SECTION 45</b>	<b>68</b>
JURISPRUDENCE	68
<i>Canada Evidence Act</i>	68

<b>SECTION 46</b>	<b>68</b>
JURISPRUDENCE	69
Precautions against disclosure	69
No indication as to whether information exists	69
Court required to take precautions	69
<i>Ex parte</i> process essential	69
<b>SECTION 47</b>	<b>70</b>
<b>SECTION 48</b>	<b>70</b>
JURISPRUDENCE	70
Court's powers under section 48	70
Role of Court / Mandatory and discretionary exemptions	71
No recourse to prerogative writs	71
No remedy for improper disclosure	72
Standard of intervention by Court	72
<b>SECTION 49</b>	<b>72</b>
JURISPRUDENCE	72
Standard of proof	72
Role of Court	73
Absence of negative findings	73
No remedy for improper disclosure	73
Role of Court where discretionary exemptions at issue	73
Standard of intervention by Court	73
<b>SECTION 50</b>	<b>74</b>
<b>SECTION 51</b>	<b>74</b>
JURISPRUDENCE	75
Hearings	75
Grounds for <i>in camera</i> or <i>ex parte</i> hearing	75
Subsection 51(2)	75
Criteria for <i>in camera ex parte</i> review	75
<b>SECTION 52</b>	<b>76</b>
JURISPRUDENCE	76
Costs--generally	76
Costs awarded where important new principle established	77
Section not to be engaged until the final result	77
<b>SECTION 53</b>	<b>78</b>
<b>SECTION 54</b>	<b>78</b>
<b>SECTION 55</b>	<b>79</b>
<b>SECTION 56</b>	<b>79</b>
<b>SECTION 57</b>	<b>79</b>
<b>SECTION 58</b>	<b>80</b>
<b>SECTION 59</b>	<b>80</b>
<b>SECTION 60</b>	<b>81</b>



<b>SECTION 61</b>	<b>81</b>
<b>SECTION 62</b>	<b>81</b>
<b>SECTION 63</b>	<b>82</b>
<b>SECTION 64</b>	<b>82</b>
<b>SECTION 65</b>	<b>82</b>
<b>SECTION 66</b>	<b>83</b>
<b>SECTION 67</b>	<b>83</b>
<b>SECTION 68</b>	<b>83</b>
<b>SECTION 69</b>	<b>84</b>
<b>SECTION 70</b>	<b>84</b>
<b>SECTION 71</b>	<b>85</b>
<b>SECTION 72</b>	<b>86</b>
<b>SECTION 73</b>	<b>86</b>
<b>SECTION 74</b>	<b>86</b>
<b>SECTION 75</b>	<b>86</b>
<b>SECTION 76</b>	<b>87</b>
<b>SECTION 77</b>	<b>87</b>
<b>SCHEDULE</b>	<b>87</b>

## Table of Cases

<i>Arkell v. Canada (Solicitor General)</i> (1992), 56 F.T.R. 161 (F.C.T.D.) .....	70
<i>Bires v. Canada (Solicitor General)</i> , [1994] F.C.J. No. 1334 (QL) (F.C.T.D.), T-3053-93, decision dated September 14, 1994 .....	54
<i>Bombardier v. Canada (Public Service Commission)</i> (1990), 41 F.T.R. 39 (F.C.T.D.); aff'd A-684-90, decision dated March 20, 1992, F.C.A., not reported .....	10, 14
<i>Byer v. Canada (Minister of External Affairs)</i> , 86-T-615, decision dated April 10, 1987, F.C.T.D., not reported; aff'd A-300-87, decision dated June 10, 1988, F.C.A. not reported. Application for leave to appeal to the S.C.C. dismissed December 8, 1988.....	65
<i>Canada (Information Commissioner) v. Canada (Immigration and Refugee Board)</i> (1997), 140 F.T.R. 140 (F.C.T.D.).....	11, 52
<i>Canada (Information Commissioner) v. Canada (Minister of Fisheries and Oceans)</i> , [1989] 1 F.C. 66; (1988), 20 F.T.R. 116; 50 D.L.R. (4th) 662 (T.D.) .....	23
<i>Canada (Information Commissioner) v. Canada (Minister of Public Works and Government Services)</i> , [1997] 1 F.C. 164; (1996) 70 C.P.R. (3d) 37 (T.D.) .....	20, 34
<i>Canada (Information Commissioner) v. Canada (Secretary of State for External Affairs)</i> , [1990] 1 F.C. 395; (1989) 32 F.T.R. 161; 64 D.L.R. (4th) 413; 28 C.P.R. (3d) 301 (T.D.) .....	20, 23
<i>Canada (Information Commissioner) v. Canada (Solicitor General)</i> , [1988] 3 F.C. 557 (T.D.) .....	18, 20
<i>Canada (Privacy Commissioner) v. Canada (Labour Relations Board)</i> , [1996] 3 F.C. 609; (1996), 118 F.T.R. 1; 41 Admin. L.R. (2d) 49 (T.D.).....	14, 41, 51
<i>Canada v. Bélanger</i> , [1988] R.J.Q. 105 (C.A.).....	29
<i>Chandran v. Canada (Minister of Employment and Immigration)</i> (1995), 91 F.T.R. 90 (F.C.T.D.) .....	31, 66, 72, 74
<i>Chandran v. Canada (Minister of Employment and Immigration)</i> (1996), 115 F.T.R. 275 (F.C.T.D.) .....	47
<i>Chen v. Canada (Canadian Security Intelligence Service)</i> , T-1904-98, order dated March 24, 1999, not reported ..	67
<i>Chen v. Canada (Canadian Security Intelligence Service)</i> , T-1904-98, order dated March 3, 1999, not reported ....	67
<i>Crawford v. William Head Penitentiary</i> (1992), 56 F.T.R. 32 (F.C.T.D.).....	25
<i>Cunha v. M.N.R.</i> , [1999] F.C.J. No. 667 (Q.L.) (F.C.T.D.), T-1023-98, order dated March 5, 1999.....	42, 44, 59, 67
<i>Dagg v. Canada (Minister of Finance)</i> (1993), 33 Admin. L.R. (2d) 171; 70 F.T.R. 54 (F.C.T.D.).....	16, 17, 18, 21
<i>Dagg v. Canada (Minister of Finance)</i> , [1995] 3 F.C. 199; (1995), 124 D.L.R. (4th) 553; 181 N.R. 139 (C.A.)16, 19, 21	
<i>Dagg v. Canada (Minister of Finance)</i> , [1997] 2 S.C.R. 403 .....	12, 15, 19, 21, 22, 36, 37
<i>Davidson v. Canada (Solicitor General)</i> , [1987] 3 F.C. 15 (T.D.); aff'd [1989] 2 F.C. 341 (C.A.).....	43, 69, 71
<i>Davidson v. Canada (Solicitor General)</i> , [1989] 2 F.C. 341 (C.A.).....	51, 68, 71, 77
<i>Gold v. Canada (Minister of National Revenue)</i> (1989), 103 N.R. 156 (F.C.A.) .....	68
<i>Gough v. Canada (National Parole Board)</i> (1990), 45 Admin. L.R. 304 (F.C.T.D.).....	40
<i>Gough v. Canada (National Parole Board)</i> (1990), 45 Admin. L.R. 304 (F.C.T.D.); <i>Lee v. Cairns</i> (1992), 51 F.T.R. 136 (F.C.T.D.).....	11
<i>H v. R.</i> , [1986] 2 F.C. 71 (T.D.).....	11, 40
<i>Igbinosun v. Canada (Minister of Citizenship and Immigration)</i> , [1994] F.C.J. No. 1705 (QL) (F.C.T.D.), IMM-7410-93, decision dated November 17, 1994.....	32
<i>Information Commissioner (Canada) v. Canada (Minister of Employment and Immigration)</i> , [1986] 3 F.C. 63; (1986), 5 F.T.R. 287 (T.D.) .....	40
<i>Kaiser v. Canada (Minister of National Revenue)</i> , T-1516-93, decision dated June 13, 1995, F.C.T.D., not reported .....	51
<i>Karakulak v. Canada (Minister of Citizenship and Immigration)</i> (1996), 119 F.T.R. 288 (F.C.T.D.).....	52, 57
<i>Kelly v. Canada (Solicitor General)</i> (1992), 53 F.T.R. 147 (F.C.T.D.); aff'd (1993), 154 N.R. 319 (F.C.A.)57, 66, 72	
<i>Latham v. Solicitor General of Canada</i> , [1984] 2 F.C. 734 (T.D.).....	40

<i>Lavigne v. Canada (Commissioner of Official Languages)</i> , [1998] F.C.J. No. 1527, T-909-97, order dated October 16, 1998 .....	11, 18, 53
<i>Lee v. Cairns</i> (1992), 51 F.T.R. 136 (T.D.) .....	32, 40
<i>Longaphy v. Canada (Solicitor General)</i> , [1995] F.C.J. No. 1429 (QL) (F.C.T.D.), T-2959-94, order dated October 27, 1995 .....	50, 56
<i>Mackenzie v. Canada (Minister of National Health and Welfare)</i> (1994), 88 F.T.R. 52; 59 C.P.R. (3d) 63 (F.C.T.D.) .....	18, 19, 30, 31, 36
<i>Majeed v. Canada (Minister of Employment and Immigration)</i> , [1993] F.C.J. No. 908 (QL) (F.C.T.D.), order dated September 14, 1993 .....	30
<i>Mislan v. Canada (Minister of National Revenue)</i> , [1998] F.C.J. No. 70 (QL) (F.C.T.D.), T-2790-96, order dated May 22, 1998 .....	23, 57
<i>Moar v. Canada (Privacy Commissioner)</i> , [1992] 1 F.C. 501; (1991), 45 F.T.R. 57 (T.D.) .....	65
<i>Montana Band of Indians v. Canada (Minister of Indian and Northern Affairs)</i> , [1989] 1 F.C. 143 (T.D.)..	14, 16, 19
<i>Muller v. Canada (Minister of Communications)</i> , [1989] F.C.J. No. 925 (QL) (F.C.A.), A-30-89, decision dated October 12, 1989.....	69
<i>Muller v. Canada (Minister of Communications)</i> , [1989] F.C.J. No. 925 (QL) (F.C.A.), A-30-89, decision dated October 12, 1989.....	54
<i>Muller v. Canada (Minister of Communications)</i> , [1990] F.C.J. No. 17 (QL) (F.C.T.D.), T-484-88, decision dated January 9, 1990 .....	69
<i>Muthulingam v. Canada (Minister of Employment and Immigration)</i> (1991), 48 F.T.R. 90 (F.C.T.D.) .....	40
<i>Noël v. Great Lakes Pilotage Authority Ltd.</i> , [1988] 2 F.C. 77; (1987), 45 D.L.R. (4th) 127 (T.D.) .....	19
<i>Parnian v. Canada (Minister of Citizenship and Immigration)</i> , [1995] F.C.J. No. 777 (QL) (F.C.T.D.), IMM-2351-94, decision dated May 19, 1995 .....	32
<i>Privacy Act (Can.) (Re)</i> , [1999] 2 F.C. 543 (T.D.) .....	33
<i>Public Service Alliance of Canada v. Canada ( Treasury Board)</i> , 161-2-791 & 169-2-584, decision dated April 26, 1996, PSSRB, not reported .....	33
<i>Puccini v. Canada (Department of Agriculture Corporate Administrative Services)</i> , [1993] 3 F.C. 557 (T.D.) ..	32, 40
<i>Rafferty v. Power</i> (1993), 15 C.P.C. (3d) 48 (B.C.S.C.).....	30
<i>Rahman v. Canada (Minister of Employment and Immigration)</i> , [1994] F.C.J. No. 2041 (QL) (F.C.T.D.), IMM-2078-93, decision dated June 10, 1994 .....	32
<i>Reyes v. Canada (Secretary of State)</i> (1984), 9 Admin. L.R. 296 (F.C.T.D.).....	11, 50, 51, 76
<i>Robertson v. Canada (Minister of Employment and Immigration)</i> (1987), 13 F.T.R. 120; 42 D.L.R. (4th) 552 (F.C.T.D.).....	17, 19, 35
<i>Rogers v. Canada (Commissioner of Official Languages)</i> , [1998] F.C.J. No. 1909 (QL) (F.C.T.D.), T-2634-97, order dated December 30, 1998 .....	26, 66
<i>Rubin v. Canada (Clerk of the Privy Council)</i> , [1994] 2 F.C. 707.....	53
<i>Rubin v. Canada (Minister of Transport)</i> (1997), 221 N.R. 145 (F.C.A.) .....	52
<i>Ruby v. Canada (Royal Canadian Mounted Police)</i> , [1998] 2 F.C. 351 (T.D.)37, 44, 46, 47, 52, 57, 70, 72, 74, 77, 78	
<i>Ruby v. Canada (Solicitor General)</i> (1994), 80 F.T.R. 81 (F.C.T.D.).....	76
<i>Ruby v. Canada (Solicitor General)</i> , [1996] 3 F.C. 134 (T.D.) .....	77
<i>Ruby v. Canada (Solicitor General)</i> , T-639-91, decision dated February 10, 1995, F.C.T.D., not reported.....	78
<i>Russell v. Canada (Canadian Security Intelligence Service)</i> (1990), 31 C.P.R. (3d) 184; 35 F.T.R. 315 (F.C.T.D.)75, 77	
<i>Shane v. Canada</i> , [1998] F.C.J. No. 1671 (QL) (F.C.T.D.), T-1678-96, order dated November 5, 1998.....	16
<i>Shepherd v. Canada (Solicitor General)</i> (1990), 36 F.T.R. 222 (F.C.T.D.).....	41, 45, 77
<i>Smith (Re)</i> , CUB-44824, decision dated May 27, 1999; aff'd [2000] F.C.J. No. 174 (QL) (F.C.A.), A-401-99, order dated February 9, 2000.....	26, 31, 34
<i>Sutherland v. Canada (Minister of Indian and Northern Affairs)</i> , [1994] 3 F.C. 527 (T.D.) .....	15, 16, 24, 31, 34, 36
<i>Ternette v. Canada (Solicitor General)</i> , [1984] 2 F.C. 486 (T.D.) .....	46, 65
<i>Ternette v. Canada (Solicitor General)</i> , [1992] 2 F.C. 75 (T.D.) .....	11, 29, 43, 48, 49, 73, 76, 78
<i>Terry v. Canada (Minister of National Defence)</i> (1994), 86 F.T.R. 226; 30 Admin. L.R. (2d) 122 (F.C.T.D.)... 21, 36	
<i>Thorsteinson v. Canada</i> , [1994] F.C.J. No. 1621 (QL) (F.C.T.D.), T-1040-93, decision dated October 31, 199454, 66	
<i>Tridel Corp. v. Canada Mortgage and Housing Corp.</i> (1996), 115 F.T.R. 185 (F.C.T.D.) .....	15
<i>Zanganeh v. Canada (Canadian Security Intelligence Service)</i> , [1989] 1 F.C. 244 (T.D.).....	44, 70, 75, 78



# ANNOTATED PRIVACY ACT

*(CURRENT AS OF SEPTEMBER 30, 1999)*

---

An Act to extend the present laws of Canada that protect the privacy of individuals and that provide individuals with a right of access to personal information about themselves

## SECTION 1

### Short title

1. This Act may be cited as the *Privacy Act*.

Legislative History: 1980-81-82-83, c. 111, Sch. II “1”.

## SECTION 2

### Purpose

2. The purpose of this Act is to extend the present laws of Canada that protect the privacy of individuals with respect to personal information about themselves held by a government institution and that provide individuals with a right of access to that information.

Legislative History: 1980-81-82-83, c. 111, Sch. II “2”.

---

## JURISPRUDENCE

### Transcript of a test

The Court held that the words “*leur support*” in the French version of the definition of “personal information” did not include an “in basket” test and related documents. To conclude otherwise would in effect render s. 22 *ATIA* inoperative.

*Bombardier v. Canada (Public Service Commission)* (1990), 41 F.T.R. 39 (F.C.T.D.); aff’d A-684-90, decision dated March 20, 1992, F.C.A., not reported.

**See also:** *ATIA* s. 22.

## Principles of the *Privacy Act*

The purpose and principles of this Act mirror those of the *ATIA*: that access is only to be denied where clearly justified, that doubts are to be resolved in favour of disclosure and the burden of persuasion rests on the party resisting disclosure.

*Reyes v. Canada (Secretary of State)* (1984), 9 Admin. L.R. 296 (F.C.T.D.).

**See also:** *PA* ss. 22, 51.

“The *PA* established a right, that had not existed before its enactment, allowing individuals to obtain access to information about themselves contained in government files. The exemptions in the Act relate to requests for information made pursuant to the Act. They do not operate so as to limit access to information to which an individual might be entitled as a result of other legal rules or principles...”

*H v. R.*, [1986] 2 F.C. 71 (T.D.).

**See also:** *Gough v. Canada (National Parole Board)* (1990), 45 Admin. L.R. 304 (F.C.T.D.); *Lee v. Cairns* (1992), 51 F.T.R. 136 (F.C.T.D.).

## Interpretation of exemptions

Taking into account the purpose of the *PA*, decisions of the Court have consistently emphasized that exemptions to access should be strictly construed.

*Ternette v. Canada (Solicitor General)*, [1992] 2 F.C. 75 (T.D.).

**See also:** *PA* s. 8.

The *Privacy Act* must be guided by its s. 2 purposive clause. The Act’s purpose is to provide access to personal information maintained by the government, and the necessary exceptions to access must be strictly construed.

*Canada (Information Commissioner) v. Canada (Immigration and Refugee Board)* (1997), 140 F.T.R. 140 (F.C.T.D.).

**See also:** *PA* ss. 22(1)(b); *ATIA* ss. 2, 16(1)(c).

Section 2 complements the *ATIA*’s own purposive clause. The message in s. 2 of the *Privacy Act* is clear: disclosure is the rule and exemption is the exception.

*Lavigne v. Canada (Commissioner of Official Languages)*, [1998] F.C.J. No. 1527, T-909-97, order dated October 16, 1998.

**To note:** This case is under appeal.

**See also:** *PA* ss. 3(g), 22(1)(b).

## No paramountcy of the *Access to Information Act* over the *Privacy Act* or vice versa

Both statutes regulate the disclosure of personal information to third parties. Subs. 4(1) of the *Access to Information Act* states that the right to government information is “subject to this Act”. Subs. 19(1) of the Act prohibits the disclosure of a record that contains personal information “as defined in s. 3 of the *Privacy Act*”. Section 8 of the *Privacy Act* 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 is

encompassed by the definition of “personal information” in s. 3 of the *Privacy Act*, privacy is paramount over access.

*Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403.

## SECTION 3

### Definitions

**3.** In this Act,

“administrative purpose(« *fins...* »

“administrative purpose”, in relation to the use of personal information about an individual, means the use of that information in a decision making process that directly affects that individual;

“alternative format(« *support de...* »

“alternative format”, with respect to personal information, means a format that allows a person with a sensory disability to read or listen to the personal information;

“Court(« *Cour* »

“Court”(means the Federal Court--Trial Division;

“designated Minister(« *ministre...* »

“designated Minister”, in relation to any provision of this Act, means such member of the Queen’s Privy Council for Canada as is designated by the Governor in Council as the Minister for the purposes of that provision;

“government institution(« *institution...* »

“government institution” means any department or ministry of state of the Government of Canada listed in the schedule or any body or office listed in the schedule;

“head(« *responsable...* »

“head”, in respect of a government institution, means

(a) in the case of a department or ministry of state, the member of the Queen’s Privy Council for Canada presiding over that institution, or

(b) in any other case, the person designated by order in council pursuant to this paragraph and for the purposes of this Act to be the head of that institution;

“personal information(« *renseignements...* »

“personal information” means information about an identifiable individual that is recorded in any form including, without restricting the generality of the foregoing,

(a) information relating to the race, national or ethnic origin, colour, religion, age or marital status of the individual,

(b) information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual by a government institution or a part of a government institution specified in the regulations,

(f) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual,

(h) the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual by an institution or a part of an institution referred to in paragraph (e), but excluding the name of the other individual where it appears with the views or opinions of the other individual, and

(i) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual,

but, for the purposes of sections 7, 8 and 26 and section 19 of the *Access to Information Act*, does not include

(j) information about an individual who is or was an officer or employee of a government institution that relates to the position or functions of the individual including,

(i) the fact that the individual is or was an officer or employee of the government institution,

(ii) the title, business address and telephone number of the individual,

(iii) the classification, salary range and responsibilities of the position held by the individual,

(iv) the name of the individual on a document prepared by the individual in the course of employment, and

(v) the personal opinions or views of the individual given in the course of employment,

(k) information about an individual who is or was performing services under contract for a government institution that relates to the services performed, including the terms of the contract, the name of the individual and the opinions or views of the individual given in the course of the performance of those services,

(l) information relating to any discretionary benefit of a financial nature, including the granting of a licence or permit, conferred on an individual, including the name of the individual and the exact nature of the benefit, and

(m) information about an individual who has been dead for more than twenty years;

“personal information bank(« *fichier...* »

“personal information bank” means a collection or grouping of personal information described in section 10;

“Privacy Commissioner(« *Commissaire...* »

“Privacy Commissioner” means the Commissioner appointed under section 53;

“sensory disability(« *déficience sensorielle* »

“sensory disability” means a disability that relates to sight or hearing.

Legislative History: R.S., 1985, c. P-21, s. 3; 1992, c. 1, s. 144(F), c. 21, s. 34.



---

## JURISPRUDENCE

### Transcript of a test

The Court held that the words “*leur support*” in the French version of the definition of “personal information” did not include an “in basket” test and related documents. To conclude otherwise would in effect render s. 22 *ATIA* inoperative.

*Bombardier v. Canada (Public Service Commission)* (1990), 41 F.T.R. 39 (F.C.T.D.); aff’d A-684-90, decision dated March 20, 1992, F.C.A., not reported.

**See also:** *ATIA* s. 22.

### Scope of the definition of “personal information”

The Court ruled that the hearing notes of a Board do not contain “personal information”. 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.

*Canada (Privacy Commissioner) v. Canada (Labour Relations Board)*, [1996] 3 F.C. 609; (1996), 118 F.T.R. 1; 41 Admin. L.R. (2d) 49 (T.D.).

**To note:** This case is under appeal.

### Corporation not identifiable individual

The applicant does not qualify as an identifiable individual. The words “identifiable individual” mean a human being, since it is only a human being that can possess all the very personal characteristics and experiences enumerated in paras. 3(a), (b), (c), (d) and (e) of the *PA*. The comments made by Jerome A.C.J. in *Montana Band of Indians v. Canada (Minister of Indian and Northern Affairs)*, [1989] 1 F.C. 143 (T.D.) that “...information about small groups may, in some cases, constitute personal information” were made in the context of an argument that Band financial statements should be considered personal information of each member of the Band.

*Tridel Corp. v. Canada Mortgage and Housing Corp.* (1996), 115 F.T.R. 185 (F.C.T.D.).

### Interpretation of opening paragraph of section 3

In the opening paragraph of section 3 of the *Privacy Act*, the provision states that “personal information” means information about an “identifiable individual that is recorded in any form including, without restricting the generality of the foregoing...”. On a plain reading, this definition is undeniably expansive. Notably, it expressly states that the list of specific examples that follows the general definition is not intended to limit the scope of the former.

*Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403.

## Onus of proof

Section 48 of the *Access to Information Act* places the onus on the government to show that it is authorized to refuse to disclose a record. The Act makes no distinction between the determination as to whether a record is *prima facie* personal information and whether it is encompassed by one of the exceptions. As a result, it is clear that even where it has been shown that the record is *prima facie* personal information, the government retains the burden of establishing that a record does not fall within one of the exceptions set out in para. 3(j) *Privacy Act*.

*Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403.

**To note:** Compare with earlier decision below.

The party wishing to demonstrate that information about an identifiable individual is not personal information must show that an exception applies.

*Sutherland v. Canada (Minister of Indian and Northern Affairs)*, [1994] 3 F.C. 527 (T.D.).

See also annotations under s. 19 ATIA.

## Social insurance numbers / Absence of legislation not contravening Charter

The plaintiff sought a declaration that the failure of the Government of Canada to enact legislation to prevent private citizens or private corporations from requesting or using the social insurance number of other private citizens contravenes the *Canadian Charter of Rights and Freedoms*. The Court ruled that: (1) the failure of the Government of Canada to include protections of the type advanced by the plaintiff did not come within the rationale of the Supreme Court decision in *Vriend v. Alberta*, [1998] 1 S.C.R. 493; (2) the *Charter* does not apply to the acts of a private citizen or corporation who request or use the SIN other than as duly authorized agents for the Government of Canada; (3) the plaintiff has no standing in the matter. The plaintiff's amended statement of claim was therefore struck as disclosing no reasonable cause of action.

*Shane v. Canada*, [1998] F.C.J. No. 1671 (QL) (F.C.T.D.), T-1678-96, order dated November 5, 1998.

## Paragraph 3(b)

### Information about an identifiable individual / Statements of a small group

Information about small groups may, in some circumstances, constitute personal information. However, in examining the financial statements of an Indian Band, the Court rejected the argument that a simple per capita division of the asset information in its financial statements would reveal the entitlement of each individual member and, for that reason, all the statements must be considered personal information. To hold otherwise would be to distort the intention of the personal information exemption.

*Montana Band of Indians v. Canada (Minister of Indian and Northern Affairs)*, [1989] 1 F.C. 143 (T.D.).

**See also:** ATIA ss. 4, 19(1), 20(1)(b), 25.

The names of persons who owed money to an Indian Band or who were owed money by the Band, or for whom the Band had guaranteed loans, and the names of individuals who were involved in similar transactions were considered *prima facie* to be personal information under para. 3(b) PA.

*Sutherland v. Canada (Minister of Indian and Northern Affairs)*, [1994] 3 F.C. 527 (T.D.).

## Employment history of government employees

The requested sign-in sheets did not constitute “information relating to the ...employment history of the individual” as defined in para. 3(b) of the *Privacy Act*. Whether or not an individual has worked overtime on a given day does not constitute “employment history” in the sense meant by Parliament in this enactment. The expression “employment history” refers to the history of positions an individual has occupied in the past, the departments he has worked for, the number of years he has worked for the government, the names of those whom he has worked for prior to joining the government and so on.

*Dagg v. Canada (Minister of Finance)* (1993), 33 Admin. L.R. (2d) 171; 70 F.T.R. 54 (F.C.T.D.).

**To note:** The Court of Appeal decision below which reversed, on other grounds, the Trial Division decision.

The Court of Appeal was in agreement with the lower Court that the names of employees do not fall within para. 3(b) of the *Privacy Act* since they are not information relating to any of the matters mentioned in that paragraph. They do not relate to the education or the medical, criminal or employment history of any individual or to financial transactions in which any individual has been involved.

*Dagg v. Canada (Minister of Finance)*, [1995] 3 F.C. 199; (1995), 124 D.L.R. (4th) 553; 181 N.R. 139 (C.A.).

**To note:** The Supreme Court of Canada did not deal with the application of para. 3(b) *PA* to the requested information. See annotations under paras. 3(i) and 3(j) *PA*.

## Paragraph 3(c)

### Personal opinions or views

Personal views and opinions expressed in a letter that the author has written as a union official are personal information within the meaning of para. 3(e) of the Act. However, to refuse disclosure of his name and identification on the basis of paras. 3(c) and 3(i) of the Act is not justified since they no longer appear with any other information relating to him. The remaining correspondence was not considered to be personal information as the author made these statements on behalf of the union.

*Robertson v. Canada (Minister of Employment and Immigration)* (1987), 13 F.T.R. 120; 42 D.L.R. (4th) 552 (F.C.T.D.).

**See also:** *PA* ss. 3(e), (i), 8(2)(m)(i); *ATIA* ss. 19(1), 47.

### Identification number of government employees

The names on sign-in sheets cannot themselves constitute an “identifying number, symbol, or other particular assigned to the individual” for the purposes of para. 3(c), since the names are expressly dealt with in para. 3(i) *PA*.

*Dagg v. Canada (Minister of Finance)* (1993), 33 Admin. L.R. (2d) 171; 70 F.T.R. 54 (F.C.T.D.).

**To note:** Neither the Court of Appeal nor the Supreme Court of Canada dealt with the application of para. 3(c) *PA* to the sign-in logs. See annotations under paras. 3(i) and 3(j) *PA*.

## Paragraph 3(e)

### Personal opinions or views

Personal views and opinions expressed in a letter that the author has written as a union official are personal information within the meaning of para. 3(e) of the Act. However, to refuse disclosure of his name and identification on the basis of paras. 3(c) and 3(i) of the Act is not justified since they no longer appear with any other information relating to him. The remaining correspondence was not considered to be personal information as the author made these statements on behalf of the union.

*Robertson v. Canada (Minister of Employment and Immigration)* (1987), 13 F.T.R. 120; 42 D.L.R. (4th) 552 (F.C.T.D.).

**See also:** *PA* ss. 3(c), (i), 8(2)(m)(i); *ATIA* ss. 19(1), 47.

## Paragraph 3(g)

### Performance of government employees

An author's opinion about specific public servants and their training, personality, experience or competence is personal information to those public servants.

*Canada (Information Commissioner) v. Canada (Solicitor General)*, [1988] 3 F.C. 557 (T.D.).

### Views or opinions of other individuals

The applicant sought access to interview notes taken by investigators of the Office of the Commissioner of Official Languages in the course of their investigation resulting from the applicant's complaints to that Office. The Court ordered the respondent to disclose all the personal information to which the applicant was entitled, that is information about himself and views or opinions of other individuals about him. Under the *PA*, the applicant is not entitled to information other than "personal information".

*Lavigne v. Canada (Commissioner of Official Languages)*, [1998] F.C.J. No. 1527, T-909-97, order dated October 16, 1998.

**To note:** This case is under appeal.

**See also:** *PA* ss. 2, 22(1)(b).

## Paragraph 3(i)

### Names of medical practitioners who have had their prescribing privileges restricted or revoked

Since disclosure of the names of those medical practitioners in Nova Scotia who have had their prescribing privileges restricted or revoked would reveal personal information about the individual, those names constitute "personal information" as provided in para. 3(i) of the Act. An individual's name is not necessarily personal information. However, in this instance, revealing the physicians' names necessarily reveals that a particular individual has had his prescription writing privileges restricted or revoked because only the names of individuals whose privileges have been restricted appear on the lists.

*Mackenzie v. Canada (Minister of National Health and Welfare)* (1994), 88 F.T.R. 52; 59 C.P.R. (3d) 63 (F.C.T.D.).

## Names of government employees / Sign-in logs

The Court held that para. 3(i) PA did not apply to the names on the sign-in sheets as the names would only be personal information if they “appear” with other personal information. The Court held that the sign-in sheets did not disclose any “other personal information” as defined in s. 3 PA.

*Dagg v. Canada (Minister of Finance)* (1993), 33 Admin. L.R. (2d) 171; 70 F.T.R. 54 (F.C.T.D.).

**To note:** The Federal Court of Appeal reversed the decision of the Trial Division (see below).

The names on the requested sign-in logs were personal information as they appeared together with identification numbers and signatures of the individuals concerned, and the identification numbers and signatures were certainly “personal information” relating to identifiable individuals. Furthermore, the names on the sign-in logs would certainly disclose that those individuals were on specific premises, on particular days and between specified times.

*Dagg v. Canada (Minister of Finance)*, [1995] 3 F.C. 199; (1995), 124 D.L.R. (4th) 553; 181 N.R. 139 (C.A.).

**To note:** The decision of the Federal Court of Appeal was reversed, on other grounds, by the Supreme Court of Canada (see below).

The proper question to be asked is whether the disclosure of the names themselves, i.e., without the time entries or signatures, would disclose information about the individual. On a plain reading, it is obvious that it would. Even if the Minister disclosed only the names of the employees listed on those logs, the disclosure would reveal that certain identifiable persons attended their workplace on those days. The disclosure of the names would thus “reveal information about the individual” within the meaning of the second part of para. 3(i) PA.

Paragraph (i) clearly states that a record is personal information if the disclosure of the name itself would reveal information about the individual. It does not require this information to be “personal”.

*Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403.

## Personal opinions or views

Personal views and opinions expressed in a letter that the author has written as a union official are personal information within the meaning of para. 3(e) of the Act. However, to refuse disclosure of his name and identification on the basis of paras. 3(c) and 3(i) of the Act is not justified since they no longer appear with any other information relating to him. The remaining correspondence was not considered to be personal information as the author made these statements on behalf of the union.

*Robertson v. Canada (Minister of Employment and Immigration)* (1987), 13 F.T.R. 120; 42 D.L.R. (4th) 552 (F.C.T.D.).

**See also:** PA ss. 3(c), (e), 8(2)(m)(i); ATIA ss. 19(1), 47.

## Disclosure of names alone

The disclosure of names alone, with no further detail, would not constitute the disclosure of personal information. Disclosure of names alone would not reveal any employment history apart from the fact that the individuals in question had made at least 10 passages in the Great Lakes pilotage area.

*Noël v. Great Lakes Pilotage Authority Ltd.*, [1988] 2 F.C. 77; (1987), 45 D.L.R. (4th) 127 (T.D.).

**To note:** The reasoning in this case has not been adopted in subsequent decisions. This decision should be compared with: *Robertson v. Canada (Minister of Employment and Immigration)* (1987), 13 F.T.R. 120; 42 D.L.R. (4th) 552 (F.C.T.D.); *Montana Band of Indians v. Canada (Minister of Indian and Northern Affairs)*, [1989] 1 F.C. 143 (T.D.); *Mackenzie v. Canada (Minister of National Health and Welfare)* (1994), 88 F.T.R. 52; 59 C.P.R. (3d) 63 (F.C.T.D.); *Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403 and *Canada (Information Commissioner) v. Canada (Secretary of State for External Affairs)*, [1990] 1 F.C. 395; (1989) 32 F.T.R. 161; 64 D.L.R. (4th) 413; 28 C.P.R. (3d) 301 (T.D.).

### **Names of MPs receiving pensions**

The names of retired MPs who receive pension benefits is personal information under para. 3(i) *PA*, and were therefore exempt from disclosure under subs. 19(1) *ATIA*. (However, the Court ordered the names released because much of the information was publicly available; their release was consented to by a number of MPs, or because the public interest outweighed the privacy interest protected.)

*Canada (Information Commissioner) v. Canada (Minister of Public Works and Government Services)*, [1997] 1 F.C. 164; (1996) 70 C.P.R. (3d) 37 (T.D.).

### **Paragraph 3(j)**

#### **Performance of government employees**

The report at issue (i.e. the Food Services Study) was the product of a publicly-funded study of a publicly-operated institution, and ought to be available to the public, unless it is protected by one of the specific exemptions in the *ATIA*. While the report may be disclosed, the author's opinions about specified individuals and their training, experience or competence must be deleted as constituting personal information.

The effect of para. 3(j) is not to create an exception to the general rule of privacy where government employees are concerned. The disputed information did not relate to the employees' positions or functions, but to their performance. It would be unjust if the details of an employee's job performance were considered public information simply because that person is in the employ of the Government. Accordingly, the opinions of the report's author about the training, experience or competence of individuals were exempted from disclosure as constituting personal information.

What Parliament intended by the incorporation of a section of the *PA* in subs. 19(1) *ATIA* was to ensure that the principles of both statutes would come into play in deciding whether to release personal information.

*Canada (Information Commissioner) v. Canada (Solicitor General)*, [1988] 3 F.C. 557 (T.D.).

**See also:** *ATIA* ss. 19(1), 25.

#### **Names, identification numbers and signatures / Sign-in logs / Overtime**

The applicant had sought the names, identification numbers and signatures of employees of the Department of Finance that had worked overtime. The Court held that a name could not constitute an "identifying number, symbol or other particular assigned to the individual" for the purpose of para. 3(c) (because names are expressly dealt with in para. 3(i) *PA*). However, para. 3(i) was not applicable because the names of employees did not appear, according to the Court, with other personal information about the employees. With regard to para. 3(b), the Court held that this paragraph was not applicable either because the fact that an employee had worked overtime did not constitute "employment history".

The Court further held that whether information falls within the residual ambit of the definition of “personal information” is to be determined by whether the predominant characteristic of the information sought is personal or professional related.

*Dagg v. Canada (Minister of Finance)* (1993), 33 Admin. L.R. (2d) 171; 70 F.T.R. 54 (F.C.T.D.).

**To note:** The Federal Court of Appeal reversed the decision of the Trial Division (see below).

The Court of Appeal rejected the “predominant characteristic test” applied at trial to characterize the personal information in question. The information was held to be “personal information” pursuant to para. 3(i) PA as it related to identifiable individuals and specified their whereabouts at specific times. The Court rejected the argument that para. 3(j) PA applied, after considering the purpose of the sign-in logs, which was to know where individuals were should an emergency arise.

*Dagg v. Canada (Minister of Finance)*, [1995] 3 F.C. 199; (1995), 124 D.L.R. (4th) 553; 181 N.R. 139 (C.A.).

**To note:** The decision of the Federal Court of Appeal was reversed by the Supreme Court of Canada (see below).

The number of hours spent at the workplace is generally information “that relates to” the position or function of the individual, and thus falls under the opening words of para. 3(j). While the Court recognized that employees may sometimes be present at their workplace for reasons unrelated to their employment, it was prepared to infer that, as a general rule, employees do not stay late into the evening or come to their place of employment on the weekend unless their work requires it. 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.

*Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403.

**See also** annotations regarding this SCC decision under subpara. 3(j)(iii) PA.

### **Information concerning an offence committed by a Canadian soldier while on service**

The respondent withheld information in the personal file of a Canadian soldier concerning an offence that the soldier had committed while on service in Somalia. The applicant sought a transcript of the charge, a copy of the subsequent disposition and a copy of the punishment.

It was clear that the information being sought was “personal information” under s. 3 of the Act.

The Court was not persuaded that the information requested by the applicant fell under any of the headings of para. 3(j). The exceptions found in para. 3(j) are very specific and should be interpreted narrowly. The rule of interpretation *expressio unius est exclusio alterius* should be followed when interpreting this paragraph.

*Terry v. Canada (Minister of National Defence)* (1994), 86 F.T.R. 226; 30 Admin. L.R. (2d) 122 (F.C.T.D.).

### **Remuneration of chairmen, heads and presiding officials**

The specific salary or monetary remuneration paid per diem to the Chairman of the Canada Council and other Governor-in-Council appointees constitutes personal information and is not excluded from the definition of personal information under subpara. 3(j)(iii) PA. Only the salary range is excluded from the definition of “personal information” under this subparagraph.

*Rubin v. Canada (Clerk of the Privy Council)* (1993), 62 F.T.R. 287; 48 C.P.R. (3d) 337 (F.C.T.D.).



## **Subparagraph 3(j)(iii)**

### **Hours spent at the workplace**

The number of hours spent at the workplace is information “that relates 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 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 discloses information generic to the position itself.

*Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403.

### **Information relating to position / Job description**

Generally speaking, information relating to the position will consist of the kind of information disclosed on a job description, such as the terms and conditions associated with a particular position, including qualifications, duties, responsibilities, hours of work and salary range.

*Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403.

### **Information relating to position / Qualitative as opposed to quantitative**

Information in 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 demanded of the employee, 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.

*Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403.

## **Subparagraph 3(j)(v)**

### **Views / “Course of employment” / Harassment**

The views of a person respecting a sexual harassment complaint in which he or she is involved clearly is personal information and cannot be viewed as views “given in the course of employment” under subpara. 3(j)(v).

*Mislan v. Canada (Minister of National Revenue)*, [1998] F.C.J. No. 70 (QL) (F.C.T.D.), T-2790-96, order dated May 22, 1998.

**See also:** *PA* s. 26.



## Paragraph 3(k)

### Versions inconsistent with each other

The approach to be taken in interpreting two versions inconsistent with each other is to adopt the version which best reflects the purpose of the relevant section, read in the context of the Act and in light of the scheme of the legislation. The Court held that the English version best reflected the purpose of para. 3(k).

*Canada (Information Commissioner) v. Canada (Secretary of State for External Affairs)*, [1990] 1 F.C. 395; (1989) 32 F.T.R. 161; 64 D.L.R. (4th) 413; 28 C.P.R. (3d) 301 (T.D.).

### Security classifications of temporary help

Security classifications are not personal information because they relate to positions, not to the individuals who occupy those positions. Even if the classification is personal information, it falls outside the definition of personal information by reason of para. 3(k) *PA* in that it relates to the services performed, not to the individual.

*Canada (Information Commissioner) v. Canada (Secretary of State for External Affairs)*, [1990] 1 F.C. 395; (1989) 32 F.T.R. 161; 64 D.L.R. (4th) 413; 28 C.P.R. (3d) 301 (T.D.).

## Paragraph 3(l)

### Information relating to the granting of a licence or permit

The names of permit recipients for access to a seal hunt were sought. The issue which was to be determined was whether, on a plain reading of para. 3(l), the words “the granting of a licence or permit”, are meant to extend the term “discretionary benefit of a financial nature” or whether they are a specific illustration of a type of benefit intended to be encompassed by the exception.

The words “granting of a licence or permit” clarify the extent of the term “discretionary benefit of a financial nature” referred to in this exception. Thus, information relating to the granting of a licence or permit will only fall under para. 3(l) if the licence or permit constitutes a discretionary benefit of a financial nature. The licences in question here were not of that nature.

*Canada (Information Commissioner) v. Canada (Minister of Fisheries and Oceans)*, [1989] 1 F.C. 66; (1988), 20 F.T.R. 116; 50 D.L.R. (4th) 662 (T.D.).

### Names, addresses and rental charges of tenants

The issue in this case was whether tenants’ names, addresses of residential properties that they rent and rents paid constitutes “personal information” under s. 3 *PA*. Upon a proper interpretation of para. 3(l), it was unnecessary to have obtained evidence of a quantifiable benefit. The Court held that just by entering into a government contract (a lease from the National Capital Commission) the tenants had conferred upon them a discretionary benefit of a financial nature. A contractual relationship between an individual and a government institution is enough to bring information relating thereto into the contemplation of para. 3(l).

In *obiter* the Court also held that the evidence and arguments indicated that the public interest in disclosure clearly outweighed any invasion of privacy resulting from disclosure.

*Bland v. Canada (National Capital Commission)*, [1991] 3 F.C. 325 (T.D.).

### **Discretionary benefit conferred by someone other than government**

The discretionary benefits referred to in para. 3(1) are those conferred by a government institution and not by other parties. In this case the discretionary benefit had been given by an Indian Band.

The applicant did not satisfy the Court that the information at issue fell under the exception in para. 3(1). The information at issue was “personal information” under s. 3 of the Act.

*Sutherland v. Canada (Minister of Indian and Northern Affairs)*, [1994] 3 F.C. 527 (T.D.).

### **Remuneration of chairmen, heads and presiding officials**

The applicant sought information that included the specific remuneration of various chairmen, heads and presiding officials.

The Court held that one’s specific salary, or monetary remuneration paid per diem, monthly or yearly constituted “personal information”. Parliament declared such information to be personal information which shall not be disclosed, unless the public interest in disclosure clearly outweighs any invasion of privacy which could result from disclosure.

The Court concluded that to disclose such salaries would destroy the privacy of individuals’ specific remuneration which Parliament had prescribed by limiting disclosure to salary range (subpara.(j)(iii) of the definition of “personal information” in s. 3 PA). However, the Court ordered the disclosure of non-monetary, non-salary remuneration under para. 3(1) PA. Even if such remuneration fell outside para. 3(1), the Court held that it was part of the “salary range” for the purpose of subpara. 3(j)(iii) PA.

*Rubin v. Canada (Clerk of the Privy Council)* (1993), 62 F.T.R. 287; 48 C.P.R. (3d) 337 (F.C.T.D.).

## **SECTION 4**

### **Collection of personal information**

**4. No personal information shall be collected by a government institution unless it relates directly to an operating program or activity of the institution.**

Legislative History: 1980-81-82-83, c. 111, Sch. II “4”.

---

## **JURISPRUDENCE**

### **Photographs / Inmates**

Taking optical images of inmates is photography for the purposes of the Commissioner’s Directives and the *Identification of Criminals Act*. No special privacy protection is needed: the *Privacy Act*, *Access to Information Act* and *Identification of Criminals Act* provide adequate protection.

*Crawford v. William Head Penitentiary* (1992), 56 F.T.R. 32 (F.C.T.D.).

## SECTION 5

### Personal information to be collected directly

5. (1) A government institution shall, wherever possible, collect personal information that is intended to be used for an administrative purpose directly from the individual to whom it relates except where the individual authorizes otherwise or where personal information may be disclosed to the institution under subsection 8(2).

### Individual to be informed of purpose

(2) A government institution shall inform any individual from whom the institution collects personal information about the individual of the purpose for which the information is being collected.

### Exception

(3) Subsections (1) and (2) do not apply where compliance therewith might

(a) result in the collection of inaccurate information; or

(b) defeat the purpose or prejudice the use for which information is collected.

Legislative History: 1980-81-82-83, c. 111, Sch. II “5”.

---

## JURISPRUDENCE

### Notification of collection purpose not required prior to disclosure of information

The Canada Employment and Immigration Commission, as recipient of the information in accordance with para. 8(2)(b), was not the collector of the information and therefore s. 5 is not applicable to the Commission. It is Customs Canada who collected the information and therefore, s. 5 applies to Customs. However, there was no obligation on Customs to notify the claimant of the purposes of the collection prior to disclosure to the Commission for unemployment insurance purposes. Subsection 5(2) cannot be interpreted as barring the disclosure of information collected until notification is first given. If disclosure to another government institution is one of the purposes for which the information is collected, it is arguable that subs. 5(2) requires that notification be given of such purpose. However, that is a requirement that arises from subs. 5(2), not from subs. 8(2). Subsection 5(2) is forward looking, unlike subs. 8(2) which deals with the disclosure of information already collected. In addition, subs. 8(2) is not stated to be subject to subs. 5(2). Therefore, there is no express provision to the effect that notification under subs. 5(2) is a general requirement before information is disclosed under subs. 8(2).

*Smith (Re)*, CUB-44824, decision dated May 27, 1999; aff'd [2000] F.C.J. No. 174 (QL) (F.C.A.), A-401-99, order dated February 9, 2000.

**See also:** PA ss. 8(2), 8(2)(b).

## SECTION 6

### Retention of personal information used for an administrative purpose

6. (1) Personal information that has been used by a government institution for an administrative purpose shall be retained by the institution for such period of time after it is so

used as may be prescribed by regulation in order to ensure that the individual to whom it relates has a reasonable opportunity to obtain access to the information.

#### Accuracy of personal information

(2) A government institution shall take all reasonable steps to ensure that personal information that is used for an administrative purpose by the institution is as accurate, up-to-date and complete as possible.

#### Disposal of personal information

(3) A government institution shall dispose of personal information under the control of the institution in accordance with the regulations and in accordance with any directives or guidelines issued by the designated minister in relation to the disposal of that information.

Legislative History: 1980-81-82-83, c. 111, Sch. II “6”.

---

## JURISPRUDENCE

### Draft documents / Retention

A preliminary report or a draft report that contains personal information must be retained for two years pursuant to the *Privacy Regulations* if the personal information contained in such a document is different from, or not substantially identical to, later versions of the same document. Conversely, if the personal information is substantially identical, the draft need not be retained on file. The Court found, on the evidence before it, that there was no reasonable basis to conclude that the personal information in the preliminary report (which was not kept on file and destroyed pursuant to the respondent’s internal procedures regarding draft documents) was substantially different than the personal information contained in the final report (which had been released to the applicant). The Court therefore dismissed the s. 41 application. The Court indicated that the Commissioner of Official Languages was bound by the Treasury Board policies with respect to how federal institutions should implement the *Privacy Act*.

*Rogers v. Canada (Commissioner of Official Languages)*, [1998] F.C.J. No. 1909 (QL) (F.C.T.D.), T-2634-97, order dated December 30, 1998.

**See:** S. 4 *Privacy Regulations*.

**See also:** PA s. 41.

## SECTION 7

#### Use of personal information

7. Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be used by the institution except

- (a) for the purpose for which the information was obtained or compiled by the institution or for a use consistent with that purpose; or
- (b) for a purpose for which the information may be disclosed to the institution under subsection 8(2).

Legislative History: 1980-81-82-83, c. 111, Sch. II “7”.

---

## JURISPRUDENCE

### Disclosure of personal information to another section of department

The applicant had complained that the respondent Department had improperly used and disclosed his personal information. It appears that he also sought a review of the decision of the Privacy Commissioner who had held that the disclosure was pursuant to para. 8(2)(a) PA. One branch of the respondent Department had disclosed his personal information to another branch of the Department so that an official could respond to the applicant's correspondence. The Court agreed with the respondent that it did not have jurisdiction to review allegations of improper disclosure of personal information.

*Gauthier v. Canada (Minister of Consumer and Corporate Affairs)* (1992), 58 F.T.R. 161 (F.C.T.D.).

## SECTION 8

### Disclosure of personal information

**8. (1)** Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be disclosed by the institution except in accordance with this section.

### Where personal information may be disclosed

(2) Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed

- (a) for the purpose for which the information was obtained or compiled by the institution or for a use consistent with that purpose;
- (b) for any purpose in accordance with any Act of Parliament or any regulation made thereunder that authorizes its disclosure;
- (c) for the purpose of complying with a subpoena or warrant issued or order made by a court, person or body with jurisdiction to compel the production of information or for the purpose of complying with rules of court relating to the production of information;
- (d) to the Attorney General of Canada for use in legal proceedings involving the Crown in right of Canada or the Government of Canada;
- (e) to an investigative body specified in the regulations, on the written request of the body, for the purpose of enforcing any law of Canada or a province or carrying out a lawful investigation, if the request specifies the purpose and describes the information to be disclosed;
- (f) under an agreement or arrangement between the Government of Canada or an institution thereof and the government of a province, the government of a foreign state, an international organization of states or an international organization established by the governments of states, or any institution of any such government or organization, for the purpose of administering or enforcing any law or carrying out a lawful investigation;
- (g) to a member of Parliament for the purpose of assisting the individual to whom the information relates in resolving a problem;
- (h) to officers or employees of the institution for internal audit purposes, or to the office of the Comptroller General or any other person or body specified in the regulations for audit purposes;
- (i) to the National Archives of Canada for archival purposes;

(j) to any person or body for research or statistical purposes if the head of the government institution

(i) is satisfied that the purpose for which the information is disclosed cannot reasonably be accomplished unless the information is provided in a form that would identify the individual to whom it relates, and

(ii) obtains from the person or body a written undertaking that no subsequent disclosure of the information will be made in a form that could reasonably be expected to identify the individual to whom it relates;

(k) to any association of aboriginal people, Indian band, government institution or part thereof, or to any person acting on behalf of such association, band, institution or part thereof, for the purpose of researching or validating the claims, disputes or grievances of any of the aboriginal peoples of Canada;

(l) to any government institution for the purpose of locating an individual in order to collect a debt owing to Her Majesty in right of Canada by that individual or make a payment owing to that individual by Her Majesty in right of Canada; and

(m) for any purpose where, in the opinion of the head of the institution,

(i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure, or

(ii) disclosure would clearly benefit the individual to whom the information relates.

#### Personal information disclosed by National Archives

(3) Subject to any other Act of Parliament, personal information under the custody or control of the National Archivist of Canada that has been transferred to the National Archivist by a government institution for archival or historical purposes may be disclosed in accordance with the regulations to any person or body for research or statistical purposes.

#### Copies of requests under paragraph (2)(e) to be retained

(4) The head of a government institution shall retain a copy of every request received by the government institution under paragraph (2)(e) for such period of time as may be prescribed by regulation, shall keep a record of any information disclosed pursuant to the request for such period of time as may be prescribed by regulation and shall, on the request of the Privacy Commissioner, make those copies and records available to the Privacy Commissioner.

#### Notice of disclosure under paragraph (2)(m)

(5) The head of a government institution shall notify the Privacy Commissioner in writing of any disclosure of personal information under paragraph (2)(m) prior to the disclosure where reasonably practicable or in any other case forthwith on the disclosure, and the Privacy Commissioner may, if the Commissioner deems it appropriate, notify the individual to whom the information relates of the disclosure.

#### Definition of "Indian band"

(6) In paragraph (2)(k), "Indian band" means

(a) a band, as defined in the *Indian Act*;

(b) a band, as defined in the *Cree-Naskapi (of Quebec) Act*, chapter 18 of the Statutes of Canada, 1984;

(c) the Band, as defined in the *Sechelt Indian Band Self-Government Act*, chapter 27 of the Statutes of Canada, 1986; or

(d) a first nation in Schedule II to the *Yukon First Nations Self-Government Act*.

## JURISPRUDENCE

### **Disclosure of personal information to another section of department**

The applicant had complained that the respondent Department had improperly used and disclosed his personal information. It appears that he also sought a review of the decision of the Privacy Commissioner who had held that the disclosure was pursuant to para. 8(2)(a) *PA*. One branch of the respondent Department had disclosed his personal information to another branch of the Department so that an official could respond to the applicant's correspondence. The Court agreed with the respondent that it did not have jurisdiction to review allegations of improper disclosure of personal information.

*Gauthier v. Canada (Minister of Consumer and Corporate Affairs)* (1992), 58 F.T.R. 161 (F.C.T.D.).

### **Information relating to others**

This section precludes disclosure of information relating to others without their consent.

*Ternette v. Canada (Solicitor General)*, [1992] 2 F.C. 75 (T.D.).

**See also:** *PA* ss. 2, 21, 49, 51.

### **Disclosure**

Disclosure pursuant to the *PA* must be done in accordance with s. 8.

*Canada v. Bélanger*, [1988] R.J.Q. 105 (C.A.).

**See also:** *ATIA* s. 19.

### **Unemployment Insurance Act and PA**

A defendant in a civil action sought certain records from the Unemployment Insurance Commission regarding the plaintiff. The Minister considered s. 8 *PA* and "deemed it advisable" under s. 96 *Unemployment Insurance Act* to only release the records if the plaintiff consented. Plaintiff did not consent. The Court held that the Minister's position was based on federal legislation and beyond challenge.

*Rafferty v. Power* (1993), 15 C.P.C. (3d) 48 (B.C.S.C.).

### **Production for litigation purposes**

The fact that personal information is not released pursuant to the terms of the *Privacy Act* does not make that information immune from production for the purposes of litigation.

*Majeed v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 908 (QL) (F.C.T.D.), order dated September 14, 1993.



## Principles of section 8

Pursuant to subs. 8(1), as a general rule, absent consent from an individual to whom the information relates, “personal information” under the control of a government institution shall not be disclosed. However, subs. 8(2) enumerates thirteen situations where personal information may otherwise be disclosed.

*Mackenzie v. Canada (Minister of National Health and Welfare)* (1994), 88 F.T.R. 52; 59 C.P.R. (3d) 63 (F.C.T.D.).

## Subsection 8(2)

### Interpretation of subs. 8(2)

None of the paragraphs under subs. 8(2) overcome the opening provisions of subsection 8(2) “subject to any other Act of Parliament”. The provisions in subs. 8(2) were thus subject to s. 96 of the *Unemployment Insurance Act*.

*Rafferty v. Power* (1993), 15 C.P.C. (3d) 48 (B.C.S.C.).

### No remedy for improper disclosure

The applicant moved for a review of the respondents’ decision to release documents on the basis that they were improperly disclosed. The applicant submitted that the documents were made public as part of a trial brief but that he himself was denied access to his personal information under the *PA*. The jurisdiction of the Federal Court under s. 41 is restricted to refusals to disclose documents. In addition the remedies under ss. 48 and 49 of the *PA* are only for refusals to give access.

*Chandran v. Canada (Minister of Employment and Immigration)* (1995), 91 F.T.R. 90 (F.C.T.D.).

**See also:** *PA* ss. 41, 48, 49.

### Notification of collection purpose not required prior to disclosure of information

The Canada Employment and Immigration Commission, as recipient of the information in accordance with para. 8(2)(b), was not the collector of the information and therefore s. 5 is not applicable to the Commission. It is Customs Canada who collected the information and therefore, s. 5 applies to Customs. However, there was no obligation on Customs to notify the claimant of the purposes of the collection prior to disclosure to the Commission for unemployment insurance purposes. Subsection 5(2) cannot be interpreted as barring the disclosure of information collected until notification is first given. If disclosure to another government institution is one of the purposes for which the information is collected, it is arguable that subs. 5(2) requires that notification be given of such purpose. However, that is a requirement that arises from subs. 5(2), not from subs. 8(2). Subsection 5(2) is forward looking, unlike subs. 8(2) which deals with the disclosure of information already collected. In addition, subs. 8(2) is not stated to be subject to subs. 5(2). Therefore, there is no express provision to the effect that notification under subs. 5(2) is a general requirement before information is disclosed under subs. 8(2).

*Smith (Re)*, CUB-44824, decision dated May 27, 1999; aff’d [2000] F.C.J. No. 174 (QL) (F.C.A.), A-401-99, order dated February 9, 2000.

**See also:** *PA* ss. 5, 8(2)(b).



## Paragraph 8(2)(a)

### Financial information re: Indian band

The names of individuals who have had financial transactions with an Indian Band were originally supplied to enable the Government to arrange to fund the Band. Nothing indicated that the disclosure of this personal information to the applicant would be a use consistent with that purpose.

*Sutherland v. Canada (Minister of Indian and Northern Affairs)*, [1994] 3 F.C. 527 (T.D.).

**See also:** *Mackenzie v. Canada (Minister of National Health and Welfare)* (1994), 88 F.T.R. 52; 59 C.P.R. (3d) 63 (F.C.T.D.).

### Relationship between natural justice and *Privacy Act*

The applicant was a reservist Lieutenant Commander and was the seasonal Executive Officer at a sea cadet camp. He was dismissed following allegations of misconduct. He sought an order from the Court, namely *certiorari*, *mandamus* and injunctive relief.

The Court ruled that the Commander was entitled to a basic degree of fairness which included knowing the case against him and being given the opportunity to explain or rebut the case. There is a general discussion as to the relationship between the *PA* and natural justice in the context of internal investigations. The Court held that the matter be reconsidered by a different chain of command and the applicant be given an opportunity to answer the allegations against him.

*Lee v. Cairns* (1992), 51 F.T.R. 136 (T.D.).

### Consistent use / Immigration purposes

The immigration officer had authority, under the *Immigration Act*, to collect information relating to the admissibility of the applicant as well as his refugee claim. The disclosure of that information to the Convention Refugee Determination Division and the latter's use of that information fell within para. 8(2)(a) of the Act.

*Rahman v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 2041 (QL) (F.C.T.D.), IMM-2078-93, decision dated June 10, 1994.

Disclosure, if any, of applicant's personal information by Canadian officials to the Nigerian police was made for the purpose of determining his refugee claim. Since the information had been provided for immigration purposes, its use, if any, by the Minister was a consistent use within para. 8(2)(a).

*Igbinosun v. Canada (Minister of Citizenship and Immigration)*, [1994] F.C.J. No. 1705 (QL) (F.C.T.D.), IMM-7410-93, decision dated November 17, 1994.

Disclosure of port of entry notes to the Refugee Board in the course of a hearing was considered by the Court to be a consistent use under para. 8(2)(a), since both serve immigration purposes.

*Parnian v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 777 (QL) (F.C.T.D.), IMM-2351-94, decision dated May 19, 1995.

### Natural justice and consistent use

The Court considered the relationship between the doctrine of natural justice and the *PA*. In *obiter*, the Court stated that when information is used to make a decision which will directly affect an individual,

that individual has the right to know the gist of the information which the person considered or is considering in reaching the decision. The Court felt that such a disclosure is a consistent use under the PA. The Court stated “if [the information] has been used and full sharing is not provided, the respondent must be prepared to defend the fairness of his process”.

*Puccini v. Canada (Department of Agriculture Corporate Administrative Services)*, [1993] 3 F.C. 557 (T.D.).

### **Disclosure of employee information to bargaining agent**

The employer had argued that the names and addresses of employees affected by the downsizing exercise could not be disclosed to their bargaining agents unless the employee’s prior consent to the disclosure was obtained. The PSSRB held that the names and addresses of affected employees could be provided to the bargaining agent without contravening the *Privacy Act* on the grounds that such disclosure was a consistent use under para. 8(2)(a) PA. The tribunal noted that the information was collected by the employer in application of its downsizing exercise and it was consistent with that use to give the names and addresses of employees to the bargaining agents because they are the exclusive representatives of the affected employees under s. 8 of the *Public Service Staff Relations Act* and need such information to represent them.

*Public Service Alliance of Canada v. Canada ( Treasury Board)*, 161-2-791 & 169-2-584, decision dated April 26, 1996, PSSRB, not reported.

### **Paragraph 8(2)(b)**

#### **Datamatch / Para. 8(2)(b) Privacy Act and s. 108 Customs Act**

With respect to para. 8(2)(b), the Court found that this provision is very broad. It authorizes the disclosure of personal information “for any purpose in accordance with any Act of Parliament...that authorizes its disclosure”. The disclosure of personal information need not be specifically authorized by an Act of Parliament. The use of the possessive pronoun “its” is simply indicative of the scope of the Act which is limited to personal information only. However, the Court found that the authorization issued by the Minister of National Revenue under para. 108(1)(b) of the *Customs Act* was an invalid exercise of the Minister’s discretion on the grounds that the authorization did not provide for limited disclosure and that the Minister had relied on considerations extraneous to the statutory objective of the *Customs Act*. The Court therefore ruled that the disclosure of personal information to the Commission was not authorized by s. 8 of the *Privacy Act* nor by s. 108 of the *Customs Act*

*Privacy Act (Can.) (Re)*, [1999] 2 F.C. 543 (T.D.).

**To note:** The Federal Court of Appeal reversed the Trial Division decision [2000] F.C.J. No. 179 (QL) (F.C.A.), A-121-99), judgment dated February 9, 2000.

**To note:** The claimant’s appeal to an Umpire under the *Unemployment Insurance Act* on the basis that the disclosure of information contained on the Customs Traveller Declaration Card to the Canada Employment and Immigration Commission was in violation of s. 8 of the *Canadian Charter of Rights and Freedoms* was dismissed ((*Smith (Re)*, CUB-44824, decision dated May 27, 1999 (upheld by the Federal Court of Appeal, A-401-99, order dated February 9, 2000). The Umpire (Rothstein J.) held that the nature of the information, the relationship between the claimant and Customs, the place and manner in which the disclosure of the information was made and the seriousness of the offence under investigation did not give rise to a reasonable expectation of privacy in relation to the information disclosed to the Commission. See the annotation below relating to the Umpire’s decision concerning para. 8(2)(b) of the *Privacy Act*.

## **No requirement that disclosure be expressly authorized in Act of Parliament**

The claimant's argument that para. 8(2)(b) does not contemplate disclosure of information under para. 108(1)(b) of the *Customs Act* on the ground that para. 108(1)(b) merely delegates the power to disclose to the Minister and does not itself expressly authorize disclosure, was dismissed. Paragraph 8(2)(b) does not spell out the mechanism by which another Act of Parliament may authorize disclosure. In delegating the disclosure decision-making power to the Minister, para. 108(1)(b) provides a mechanism which, when properly carried out, authorizes disclosure. Therefore, para. 8(2)(b) provides for the disclosure of information by Customs to the Canada Employment and Immigration Commission as long as it is made in accordance with para. 108(1)(b) of the *Customs Act*. Paragraph 8(2)(b) imposes no additional obligations or restrictions on Customs over those in para. 108(1)(b).

*Smith (Re)*, CUB-44824, decision dated May 27, 1999; aff'd [2000] F.C.J. No. 174 (QL) (F.C.A.), A-401-99, order dated February 9, 2000.

**See also:** *PA* ss. 5, 8(2).

## **Paragraph 8(2)(k)**

### **Definition of "aboriginal peoples"**

The term "researching or validating the claims, disputes or grievances of any of the aboriginal peoples of Canada" contemplates formal claims or disputes brought by aboriginal peoples in their capacity as aboriginal peoples. The words do not apply to all disputes between individuals of aboriginal descent. Otherwise, para. 8(2)(k) *PA* would allow for the disclosure of "personal information" in disputes involving individuals of aboriginal descent but not in disputes involving other ethnic groups. The *PA* never intended such a distinction.

*Sutherland v. Canada (Minister of Indian and Northern Affairs)*, [1994] 3 F.C. 527 (T.D.).

## **Paragraph 8(2)(m)**

### **Amount of MPs' pensions / Public interest in disclosure**

The names of pension recipients and the amounts of the pensions received 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 Court held that the names of retired MPs who receive pension benefits is personal information which would be exempt from disclosure under subs. 19(1) *ATIA*. However, the Court ordered the names released because much of the information was publicly available; their release was consented to by a number of MPs or because the public interest outweighed the privacy interest protected.

*Canada (Information Commissioner) v. Canada (Minister of Public Works and Government Services)*, [1997] 1 F.C. 164; (1996) 70 C.P.R. (3d) 37 (T.D.).

## **Subparagraph 8(2)(m)(i)**

### **Views and opinions expressed by a union official / Preparation of submissions**

The applicant raised a "public interest" argument and requested disclosure of the information in order to properly prepare counter-submissions for the grant application.

The Court concluded that if there was a public interest in this case it was fully served by disclosure of the text of that portion of the letter which was written on behalf of the union. The Court did not see that the public interest required disclosure of the personal views and opinions of the union official simply for the purpose of assisting the applicant to prepare further submissions.

*Robertson v. Canada (Minister of Employment and Immigration)* (1987), 13 F.T.R. 120; 42 D.L.R. (4th) 552 (F.C.T.D.).

### **Names, addresses and rental charges of tenants**

The applicant sought access to the names of NCC tenants and the addresses of properties that the tenants rented from the NCC as well as the rents paid.

In *obiter*, the Court stated that the “public interest in disclosure” is a paramount value which is to be suppressed only when and if it clearly does not outweigh any invasion of privacy.

The evidence and arguments indicated that the tenants’ privacy interest in the non-disclosure of their rental obligations was so negligible that any invasion of it, resulting from disclosure, was clearly outweighed by the public interest. In view of the fact that non-disclosure would generate the corrosion of public trust, suspicion and public cynicism in a free and democratic society, the public interest in disclosure clearly outweighed any invasion of privacy resulting from disclosure.

*Bland v. Canada (National Capital Commission)*, [1991] 3 F.C. 325 (T.D.).

### **Remuneration of chairmen, heads and presiding officials**

Parliament has declared specific salary sums and daily remuneration rates to be personal information which shall not be disclosed, unless the public interest in disclosure clearly (not “barely” nor yet “presumably”) outweighs any invasion of privacy which could result from disclosure.

To disclose such information would destroy the privacy of individuals’ specific remuneration which Parliament has prescribed by limiting disclosure to salary range. The public interest does not reside in disclosure of individuals’ specific remuneration in this very particular instance. “[I]f government could be seen to be enriching its pets at undue public expense... then the public interest [would be] in favour of disclosure”.

The greater the Government's embarrassment over its own folly with the taxpayers' money, the greater the public interest in disclosure of the information. In this instance, public interest in disclosure does not clearly outweigh any invasion of the privacy.

*Rubin v. Canada (Clerk of the Privy Council)* (1993), 62 F.T.R. 287; 48 C.P.R. (3d) 337 (F.C.T.D.).

### **Information concerning an offence committed by a Canadian soldier while on service**

The information in the personal file of a Canadian soldier concerning an offence that he committed while on service in Somalia is “personal information” under s. 3 of the Act.

The Court did not agree that the information requested could be of any public interest and held that the information should not be released pursuant to s. 8 of the Act.

*Terry v. Canada (Minister of National Defence)* (1994), 86 F.T.R. 226; 30 Admin. L.R. (2d) 122 (F.C.T.D.).

## Private vs public interests

The names of those medical practitioners in Nova Scotia who have had their prescribing privileges restricted or revoked constitute “personal information” as provided for in para. 3(i) of the Act.

Whether the public interest “clearly outweighs” an invasion of privacy is a discretionary matter conferred on the head of the responsible government institution. It must be exercised in a manner which is in accordance with the conferring statute.

Subparagraph 8(2)(m)(i) mandates more than a blanket statement from the respondent that a private interest overrides the public’s right to disclosure.

*Mackenzie v. Canada (Minister of National Health and Welfare)* (1994), 88 F.T.R. 52; 59 C.P.R. (3d) 63 (F.C.T.D.).

## Exercising discretion

The applicant argued that the Court should substitute its opinion for that of the head of the government institution by determining that the public interest in disclosure of the personal information clearly outweighed the invasion of privacy. The Court stated that when the head of a government institution, in the exercise of a discretion conferred upon him or her by Parliament, decides that the public interest in disclosure of personal information does not clearly outweigh the invasion of privacy then the head acts within his or her jurisdiction. For a Court to interfere with such a decision, it must conclude that the head was not authorized to exercise his or her discretion in the manner in which it was exercised. The Court did not arrive at such a conclusion in this case.

*Sutherland v. Canada (Minister of Indian and Northern Affairs)*, [1994] 3 F.C. 527 (T.D.).

## Exercise of discretion--no *de novo* review

A minister’s discretionary decision under subpara. 8(2)(m)(i) is not to be reviewed on a *de novo* standard of review. In *obiter*, the Court held that a minister is not obliged to consider whether it is in the public interest to disclose personal information. However, in the face of a demand 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.

*Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403.

## Burden of proof regarding public interest

In *obiter*, the Court recognized that it could be argued that the Minister had committed an error in principle resulting in a loss of jurisdiction when he stated to the requester: “I do not believe that you have demonstrated that if there were any public interest that it clearly overrides the individual’s right to privacy.” From this, 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. If this had been the conclusion reached, the Court would have referred the matter back to the Minister for consideration without the imposition of the onus on the appellant.

*Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403.

## No obligation to consider para. 8(2)(m) grounds

A proper exercise of the discretion under s. 26 does not require the head of the institution to consider para. 8(2)(m) before refusing to disclose the information.

*Ruby v. Canada (Royal Canadian Mounted Police)*, [1998] 2 F.C. 351 (T.D.).

**To note:** This case is under appeal.

**See also:** PA ss. 16, 18, 19, 22, 26, 46, 48, 49, 52.

## SECTION 9

### Record of disclosures to be retained

**9.** (1) The head of a government institution shall retain a record of any use by the institution of personal information contained in a personal information bank or any use or purpose for which that information is disclosed by the institution where the use or purpose is not included in the statements of uses and purposes set forth pursuant to subparagraph 11(1)(a)(iv) and subsection 11(2) in the index referred to in section 11, and shall attach the record to the personal information.

### Limitation

(2) Subsection (1) does not apply in respect of information disclosed pursuant to paragraph 8(2)(e).

### Record forms part of personal information

(3) For the purposes of this Act, a record retained under subsection (1) shall be deemed to form part of the personal information to which it is attached.

### Consistent uses

(4) Where personal information in a personal information bank under the control of a government institution is used or disclosed for a use consistent with the purpose for which the information was obtained or compiled by the institution but the use is not included in the statement of consistent uses set forth pursuant to subparagraph 11(1)(a)(iv) in the index referred to in section 11, the head of the government institution shall

(a) forthwith notify the Privacy Commissioner of the use for which the information was used or disclosed; and

(b) ensure that the use is included in the next statement of consistent uses set forth in the index.

Legislative History: 1980-81-82-83, c. 111, Sch. II “9”; 1984, c. 21, s. 89.

## SECTION 10

### Personal information to be included in personal information banks

**10.** (1) The head of a government institution shall cause to be included in personal information banks all personal information under the control of the government institution that

(a) has been used, is being used or is available for use for an administrative purpose; or

(b) is organized or intended to be retrieved by the name of an individual or by an identifying number, symbol or other particular assigned to an individual.

### Exception for National Archives

(2) Subsection (1) does not apply in respect of personal information under the custody or control of the National Archivist of Canada that has been transferred to the National Archivist of Canada by a government institution for archival or historical purposes.

Legislative History: R.S., 1985, c. P-21, s. 10; R.S., 1985, c. 1 (3rd Supp.), s. 12.

## SECTION 11

### Index of personal information

**11. (1)** The designated Minister shall cause to be published on a periodic basis not less frequently than once each year, an index of

(a) all personal information banks setting forth, in respect of each bank,

(i) the identification and a description of the bank, the registration number assigned to it by the designated Minister pursuant to para. 71(1)(b) and a description of the class of individuals to whom personal information contained in the bank relates,

(ii) the name of the government institution that has control of the bank,

(iii) the title and address of the appropriate officer to whom requests relating to personal information contained in the bank should be sent,

(iv) a statement of the purposes for which personal information in the bank was obtained or compiled and a statement of the uses consistent with those purposes for which the information is used or disclosed,

(v) a statement of the retention and disposal standards applied to personal information in the bank, and

(vi) an indication, where applicable, that the bank was designated as an exempt bank by an order under section 18 and the provision of section 21 or 22 on the basis of which the order was made; and

(b) all classes of personal information under the control of a government institution that are not contained in personal information banks, setting forth in respect of each class

(i) a description of the class in sufficient detail to facilitate the right of access under this Act, and

(ii) the title and address of the appropriate officer for each government institution to whom requests relating to personal information within the class should be sent.

### Statement of uses and purposes

(2) The designated Minister may set forth in the index referred to in subsection (1) a statement of any of the uses and purposes, not included in the statements made pursuant to subparagraph (1)(a)(iv), for which personal information contained in any of the personal information banks referred to in the index is used or disclosed on a regular basis

### Index to be made available

(3) The designated Minister shall cause the index referred to in subsection (1) to be made available throughout Canada in conformity with the principle that every person is entitled to reasonable access to the index.

Legislative History: 1980-81-82-83, c.111, Sch. II “11”.



## SECTION 12

### Right of access

**12. (1)** Subject to this Act, every individual who is a Canadian citizen or a permanent resident within the meaning of the *Immigration Act* has a right to and shall, on request, be given access to

- (a) any personal information about the individual contained in a personal information bank; and
- (b) any other personal information about the individual under the control of a government institution with respect to which the individual is able to provide sufficiently specific information on the location of the information as to render it reasonably retrievable by the government institution.

### Other rights relating to personal information

(2) Every individual who is given access under paragraph (1)(a) to personal information that has been used, is being used or is available for use for an administrative purpose is entitled to

- (a) request correction of the personal information where the individual believes there is an error or omission therein;
- (b) require that a notation be attached to the information reflecting any correction requested but not made; and
- (c) require that any person or body to whom that information has been disclosed for use for an administrative purpose within two years prior to the time a correction is requested or a notation is required under this subsection in respect of that information
  - (i) be notified of the correction or notation, and
  - (ii) where the disclosure is to a government institution, the institution make the correction or notation on any copy of the information under its control.

### Extension of right of access by order

(3) The Governor in Council may, by order, extend the right to be given access to personal information under subsection (1) to include individuals not referred to in that subsection and may set such conditions as the Governor in Council deems appropriate.

Legislative History: 1980-81-82-83, c. 111, Sch. II “12”.

---

## JURISPRUDENCE

### Qualifications of requester

The requester had originally sought information about herself under the *PA*. The request had been refused because she was neither a Canadian citizen nor a permanent resident, as required under subs. 12(1) *PA*. The requester’s lawyer then made an access request which was accompanied by the requester’s consent to disclose her personal information. The respondent had refused to disclose the personal information to the lawyer invoking subsection 19(2) of the *ATIA*. The Court ordered the information released to the lawyer.

*Information Commissioner (Canada) v. Canada (Minister of Employment and Immigration)*, [1986] 3 F.C. 63; (1986), 5 F.T.R. 287 (T.D.).



## **Privacy Act subordinate to Charter**

PA exemptions are subordinate to the fairness provisions in the *Canadian Charter of Rights and Freedoms*. A refusal to disclose information which has the result of depriving an individual of even an outline of the allegations being considered by a tribunal in deciding whether to deny that person his liberty is unconstitutional.

*Latham v. Solicitor General of Canada*, [1984] 2 F.C. 734 (T.D.).

**To note:** In this case, the Court considered a parole matter which incorporated by reference exemptions from the precursor of the PA.

**See also:** *H v. R.*, [1986] 2 F.C. 71 (T.D.); *Gough v. Canada (National Parole Board)* (1990), 45 Admin. L.R. 304 (F.C.T.D.); *Lee v. Cairns* (1992), 51 F.T.R. 136 (T.D.) and *Puccini v. Canada (Department of Agriculture Corporate Administrative Services)*, [1993] 3 F.C. 557 (T.D.).

## **Extension of time**

The applicant sought an extension of time to file material in the Federal Court because he wanted to submit a request for his personal information under the PA. The Court held that the proper procedure to follow was specified in the *Federal Court Immigration Rules*. Since there was already a specific procedure for the applicant to obtain the relevant material, the Court did not consider it appropriate to order a delay to allow the applicant to file a request under the PA.

*Muthulingam v. Canada (Minister of Employment and Immigration)* (1991), 48 F.T.R. 90 (F.C.T.D.).

## **Notes taken by Board members not “under the control”**

Notes taken by CLRB members are not “under the control” of the Board. The Court held 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.

*Canada (Privacy Commissioner) v. Canada (Labour Relations Board)*, [1996] 3 F.C. 609; (1996), 118 F.T.R. 1; 41 Admin. L.R. (2d) 49 (T.D.).

**To note:** This case is under appeal.

## **SECTION 13**

### **Request for access under paragraph 12(1)(a)**

**13. (1)** A request for access to personal information under paragraph 12(1)(a) shall be made in writing to the government institution that has control of the personal information bank that contains the information and shall identify the bank.

#### Request for access under 12(1)(b)

(2) A request for access to personal information under paragraph 12(1)(b) shall be made in writing to the government institution that has control of the information and shall provide sufficiently specific information on the location of the information as to render it reasonably retrievable by the government institution.

Legislative History: 1980-81-82-83, c. 111, Sch. II “13”.

---

## JURISPRUDENCE

### Extent of search

To respond to a request for access to “parole case files”, the Court directed the respondent to take into account files contained in its archives.

*Shepherd v. Canada (Solicitor General)* (1990), 36 F.T.R. 222 (F.C.T.D.).

**See also:** *PA* s. 17.

## SECTION 14

#### Notice where access requested

**14.** Where access to personal information is requested under subsection 12(1), the head of the government institution to which the request is made shall, subject to section 15, within thirty days after the request is received,

(a) give written notice to the individual who made the request as to whether or not access to the information or a part thereof will be given; and

(b) if access is to be given, give the individual who made the request access to the information or the part thereof.

Legislative History: 1980-81-82-83, c. 111, Sch. II “14”.

---

## JURISPRUDENCE

### Jurisdiction of Court premised on complaint to Commissioner

The Court dismissed an application for a declaration that the applicant’s rights under the *Privacy Act* to receive a response within 30 days or to be given notice of an extension of time were infringed. The Court held that it was without jurisdiction to grant the relief sought since s. 41 clearly contemplates complaints being made, first, to the Privacy Commissioner before any application for relief can be made to the Court. In this case, the applicant had not made any complaint to the Commissioner.

*Cunha v. M.N.R.*, [1999] F.C.J. No. 667 (Q.L.) (F.C.T.D.), T-1023-98, order dated March 5, 1999.

**See also:** *PA* ss. 15, 16, 29, 41.

## SECTION 15

### Extension of time limits

**15.** The head of a government institution may extend the time limit set out in section 14 in respect of a request for

(a) a maximum of thirty days if

(i) meeting the original time limit would unreasonably interfere with the operations of the government institution, or

(ii) consultations are necessary to comply with the request that cannot reasonably be completed within the original time limit, or

(b) such period of time as is reasonable, if additional time is necessary for translation purposes or for the purposes of converting the personal information into an alternative format,

by giving notice of the extension and the length of the extension to the individual who made the request within thirty days after the request is received, which notice shall contain a statement that the individual has a right to make a complaint to the Privacy Commissioner about the extension.

Legislative History: R.S., 1985, c. P-21, s. 15; 1992, c. 21, s. 35.

---

## JURISPRUDENCE

### Jurisdiction of Court premised on complaint to Commissioner

The Court dismissed an application for a declaration that the applicant's rights under the *Privacy Act* to receive a response within 30 days or to be given notice of an extension of time were infringed. The Court held that it was without jurisdiction to grant the relief sought since s. 41 clearly contemplates complaints being made, first, to the Privacy Commissioner before any application for relief can be made to the Court. In this case, the applicant had not made any complaint to the Commissioner.

*Cunha v. M.N.R.*, [1999] F.C.J. No. 667 (Q.L.) (F.C.T.D.), T-1023-98, order dated March 5, 1999.

**See also:** *PA* ss. 14, 16, 29, 41.

## SECTION 16

### Where access is refused

**16. (1)** Where the head of a government institution refuses to give access to any personal information requested under subsection 12(1), the head of the institution shall state in the notice given under paragraph 14(a)

(a) that the personal information does not exist, or

(b) the specific provision of this Act on which the refusal was based or the provision on which a refusal could reasonably be expected to be based if the information existed,

and shall state in the notice that the individual who made the request has a right to make a complaint to the Privacy Commissioner about the refusal.

Existence not required to be disclosed

(2) The head of a government institution may but is not required to indicate under subsection (1) whether personal information exists.

Deemed refusal to give access

(3) Where the head of a government institution fails to give access to any personal information requested under subsection 12(1) within the time limits set out in this Act, the head of the institution shall, for the purposes of this Act, be deemed to have refused to give access.

Legislative History: 1980-81-82-83, c. 111, Sch. II “16”.

---

## JURISPRUDENCE

### Head bound by original exemption

By virtue of the requirement in para. 16(1)(b) that the head of the institution state the specific provision on which a refusal could reasonably be expected to be based in the notice to be given the applicant under s. 14, the Court held that the head will be bound by the grounds asserted in the notice of refusal even where the refusal may be authorized under another section not stated therein.

*Ternette v. Canada (Solicitor General)*, [1992] 2 F.C. 75 (T.D.).

**See also:** PA ss. 18, 41.

The reasoning in *Ternette*, *supra*, was approved by the F.C.A. which upheld a decision of the Trial Division on the basis that to permit new exemptions would deny the complainant the benefit of the Privacy Commissioner’s investigative procedure and assistance. A possible exception may arise with respect to the mandatory grounds of exemption under subs. 19(1) of the *ATIA*.

*Davidson v. Canada (Solicitor General)*, [1987] 3 F.C. 15 (T.D.); aff’d [1989] 2 F.C. 341 (C.A.).

**See also:** PA ss. 22, 45, 52; *ATIA* s. 2.

### No indication as to whether information exists

The very acknowledgement that information exists could compromise the security of Canada; the imperative under para. 16(1)(b) that the respondent is not obliged to reveal whether or not it has any personal information about the applicant is justified by the respondent’s own governing legislation and more importantly by s. 1 of the *Canadian Charter of Rights and Freedoms*.

*Zanganeh v. Canada (Canadian Security Intelligence Service)*, [1989] 1 F.C. 244 (T.D.).

**See also:** PA ss. 46, 51, 52.

### Departmental practice / No fettering of discretion

It was argued that the Department of External Affairs and the Canadian Intelligence Security Service had failed to exercise their discretion under subs. 16(2) because they followed a standard practice of declining to indicate the existence of personal information in banks other than s. 18 exempt banks. The Act does not preclude the head of the institution from deciding that information in certain banks other than those exempt under s. 18 should also not be acknowledged to exist. Subsection 16(2) is not limited in its application to exempt banks as provided for under s. 18, nor is it limited to a specific item of

information or to a specific request for information. There was no fettering of discretion under subs. 16(2) on the part of those institutions.

Since the refusal to indicate the existence of personal information banks was authorized, the alternative explanations for refusal to disclose the information had little significance for the result of this review.

*Ruby v. Canada (Royal Canadian Mounted Police)*, [1998] 2 F.C. 351 (T.D.).

**To note:** This case is under appeal.

**See also:** PA ss. 8, 18, 19, 22, 26, 46, 47, 48, 49, 52.

### **Whether deemed refusal proper subject-matter of complaint**

The Court dismissed an application for a declaration that the applicant's rights under the *Privacy Act* to receive a response within 30 days or to be given notice of an extension of time were infringed. Under subs. 16(3), the failure to reply in accordance with the time limits constitutes a "deemed refusal". The Court held that although a deemed refusal was not specifically listed under s. 29 as one of the circumstances in which a complaint can be made to the Commissioner (unlike an actual refusal or an alleged unreasonable extension of time), it nevertheless fell within the words of subpara. 29(1)(h)(i) of the Act ("the collection, retention or disposal of personal information by a government institution"). Since s. 41 clearly contemplates complaints being made, first, to the Privacy Commissioner before any application for relief can be made to the Court. Since the applicant had not made any complaint to the Commissioner, the Court was without jurisdiction to grant the relief sought.

*Cunha v. M.N.R.*, [1999] F.C.J. No. 667 (Q.L.) (F.C.T.D.), T-1023-98, order dated March 5, 1999.

**See also:** PA ss. 14, 15, 29, 41.

**See also annotations under s. 41 ATIA.**

## **SECTION 17**

### Form of access

**17. (1)** Subject to any regulations made under paragraph 77(1)(o), where an individual is to be given access to personal information requested under subsection 12(1), the government institution shall

- (a) permit the individual to examine the information in accordance with the regulations; or
- (b) provide the individual with a copy thereof.

### Language of access

(2) Where access to personal information is to be given under this Act and the individual to whom access is to be given requests that access be given in a particular one of the official languages of Canada,

- (a) access shall be given in that language, if the personal information already exists under the control of a government institution in that language; and
- (b) where the personal information does not exist in that language, the head of the government institution that has control of the personal information shall cause it to be translated or interpreted for the individual if the head of the institution considers a translation or interpretation to be necessary to enable the individual to understand the information.

### Access to personal information in alternative format

(3) Where access to personal information is to be given under this Act and the individual to whom access is to be given has a sensory disability and requests that access be given in an alternative format, access shall be given in an alternative format if

(a) the personal information already exists under the control of a government institution in an alternative format that is acceptable to the individual; or

(b) the head of the government institution that has control of the personal information considers the giving of access in an alternative format to be necessary to enable the individual to exercise the individual's right of access under this Act and considers it reasonable to cause the personal information to be converted.

Legislative History: R.S., 1985, c. P-21, s. 17; 1992, c. 21, s. 36.

---

## JURISPRUDENCE

### Means of access

Paragraph 17(1)(a) provides for means of access to information other than providing a copy of the record to the individual who requests it.

*Shepherd v. Canada (Solicitor General)* (1990), 36 F.T.R. 222 (F.C.T.D.).

**See also:** PA ss. 13, 52.

## SECTION 18

### Governor in Council may designate exempt banks

**18.** (1) The Governor in Council may, by order, designate as exempt banks certain personal information banks that contain files all of which consist predominantly of personal information described in section 21 or 22.

### Disclosure may be refused

(2) The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) that is contained in a personal information bank designated as an exempt bank under subsection (1).

### Contents of order

(3) An order made under subsection (1) shall specify

(a) the section on the basis of which the order is made; and

(b) where a personal information bank is designated that contains files that consist predominantly of personal information described in subparagraph 22(1)(a)(ii), the law concerned.

Legislative History: 1980-81-82-83, c. 111, Sch. II "18".

---

## JURISPRUDENCE

### Designating order

An order designating an information bank as an exempt bank can only be made where each of the files consists predominantly of personal information described in s. 21 (relating to international affairs and defence) or s. 22 (relating to law enforcement and investigation).

*Ternette v. Canada (Solicitor General)*, [1984] 2 F.C. 486 (T.D.).

**See also:** PA ss. 16, 41.

### Departmental practice to refuse to indicate existence of personal information

It was argued that the Department of External Affairs and the Canadian Intelligence Security Service had failed to exercise their discretion under subs. 16(2) because they followed a standard practice of declining to indicate the existence of personal information in banks other than s. 18 exempt banks. The Act does not preclude the head of the institution from deciding that information in certain banks other than those exempt under s. 18 should also not be acknowledged to exist. Subsection 16(2) is not limited in its application to exempt banks as provided for under s. 18, nor is it limited to a specific item of information or to a specific request for information. There was no fettering of discretion under subs. 16(2) on the part of those institutions.

Since the refusal to indicate the existence of personal information banks was authorized, the alternative explanations for refusal to disclose the information had little significance for the result of this review.

*Ruby v. Canada (Royal Canadian Mounted Police)*, [1998] 2 F.C. 351 (T.D.).

**See also:** PA ss. 8, 16, 19, 22, 26, 46, 48, 49, 52.

## SECTION 19

### Personal information obtained in confidence

**19. (1)** Subject to subsection (2), the head of a government institution shall refuse to disclose any personal information requested under subsection 12(1) that was obtained in confidence from

- (a) the government of a foreign state or an institution thereof;
- (b) an international organization of states or an institution thereof;
- (c) the government of a province or an institution thereof; or
- (d) a municipal or regional government established by or pursuant to an Act of the legislature of a province or an institution of such a government.

### Where disclosure authorized

**(2)** The head of a government institution may disclose any personal information requested under subsection 12(1) that was obtained from any government, organization or institution described in subsection (1) if the government, organization or institution from which the information was obtained

- (a) consents to the disclosure; or
- (b) makes the information public.

---

## JURISPRUDENCE

### Information received in confidence re-iterated in federally-generated document

Personal information which was received in confidence from a provincial government and later re-iterated in correspondence from one federal officer to another federal officer can be exempted under para. 19(1)(c) *PA* if the Crown can demonstrate that the information was obtained from a government of a province or an institution thereof and that the information had been obtained in confidence.

*Chandran v. Canada (Minister of Employment and Immigration)* (1996), 115 F.T.R. 275 (F.C.T.D.).

### No obligation to seek consent

The head of a government institution does not first have to seek consent of the other government before applying the s. 19 exemption. That would reverse the primary thrust of s. 19, that information in that classification not be disclosed.

*Ruby v. Canada (Royal Canadian Mounted Police)*, [1998] 2 F.C. 351 (T.D.).

**To note:** This case is under appeal.

**See also:** *PA* ss. 8, 16, 18, 22, 26, 46, 48, 49, 52.

**See also annotations under s. 13 *ATIA*.**

## SECTION 20

### Federal-provincial affairs

**20.** The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) the disclosure of which could reasonably be expected to be injurious to the conduct by the Government of Canada of federal-provincial affairs.

Legislative History: 1980-81-82-83, c. 111, Sch. II “20”.

---

## JURISPRUDENCE

**See annotations under s. 14 *ATIA*.**

## SECTION 21

### International affairs and defence

**21.** The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) the disclosure of which could reasonably be expected to be injurious to the conduct of international affairs, the defence of Canada or any state allied or associated with Canada, as defined in subsection 15(2) of the *Access to Information Act*, or the efforts of Canada toward detecting, preventing or suppressing subversive or hostile activities,



as defined in subsection 15(2) of the *Access to Information Act*, including, without restricting the generality of the foregoing, any such information listed in paragraphs 15(1)(a) to (i) of the *Access to Information Act*.

Legislative History: 1980-81-82-83, c. 111, Sch. II “21”.

---

## JURISPRUDENCE

### Scope of the expression "subversive or hostile activities"

Reference in s. 21 to “subversive or hostile activities” is not limited to the definition thereof in subs. 15(2) *ATIA*, but incorporates by reference subs. 15(1) which amplifies the meaning in subs. 15(2) *ATIA*.

*Ternette v. Canada (Solicitor General)*, [1992] 2 F.C. 75 (T.D.).

### Nature of prejudice

The injurious effects, under the latter portion of s. 21, to the efforts of Canada “toward detecting, preventing or suppressing subversive or hostile activities”, are injuries to the interests of CSIS in light of its responsibilities as established by ss. 12 to 18 of the *Canadian Security Intelligence Act* which set out the duties and functions of the Service.

*Ternette v. Canada (Solicitor General)*, [1992] 2 F.C. 75 (T.D.).

**See also:** *PA* ss. 49, 51, 51(2).

### Timing of injury

The Court indicated that the likelihood of injury is to be assessed at the date the information is to be released, and the reasons for collection of the information are distinct from considerations of potential injury likely to be caused by its release.

*Ternette v. Canada (Solicitor General)*, [1992] 2 F.C. 75 (T.D.).

**See also:** *PA* ss. 49, 51, 51(2).

### Injury test / Criterion

The test for injury as provided by s. 21 ought to be applied in terms specified in the Treasury Board guidelines dealing with *PA* applications. Those provide that “injurious”, in the context of s. 21, means having a detrimental effect and disclosure of the information must reasonably be expected to prove harmful or damaging to the specific public or private interest covered by the exemption in order for access to be refused. The injury in any given case should be specific to the party or the interest which will suffer injury; it should be current in the sense that the detrimental effect is perceived at the time the exemption is claimed or in the foreseeable future; and the injury should be probable, in that there is to be a reasonable likelihood of its occurrence.

*Ternette v. Canada (Solicitor General)*, [1992] 2 F.C. 75 (T.D.).

**See also annotations under s. 15 *ATIA*.**

## SECTION 22

### Law enforcement and investigation

**22. (1)** The head of a government institution may refuse to disclose any personal information requested under subsection 12(1)

(a) that was obtained or prepared by any government institution, or part of any government institution, that is an investigative body specified in the regulations in the course of lawful investigations pertaining to

- (i) the detection, prevention or suppression of crime,
- (ii) the enforcement of any law of Canada or a province, or
- (iii) activities suspected of constituting threats to the security of Canada within the meaning of the *Canadian Security Intelligence Service Act*,

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

(b) the disclosure of which could reasonably be expected to be injurious to the enforcement of any law of Canada or a province or the conduct of lawful investigations, including, without restricting the generality of the foregoing, any such information

- (i) relating to the existence or nature of a particular investigation,
- (ii) that would reveal the identity of a confidential source of information, or
- (iii) that was obtained or prepared in the course of an investigation; or

(c) the disclosure of which could reasonably be expected to be injurious to the security of penal institutions.

### Policing services for provinces or municipalities

(2) The head of a government institution shall refuse to disclose any personal information requested under subsection 12(1) that was obtained or prepared by the Royal Canadian Mounted Police while performing policing services for a province or municipality pursuant to an arrangement made under section 20 of the *Royal Canadian Mounted Police Act*, where the Government of Canada has, on the request of the province or municipality, agreed not to disclose such information.

### Definition of “investigation”

(3) For the purposes of paragraph (1)(b), “investigation” means an investigation that

- (a) pertains to the administration or enforcement of an Act of Parliament;
- (b) is authorized by or pursuant to an Act of Parliament; or
- (c) is within a class of investigations specified in the regulations.

Legislative History: 1980-81-82-83, c. 111, Sch. II ”22”; 1984, c. 21, s. 90, c. 40, s. 79.

---

## JURISPRUDENCE

### Paragraph 22(1)(a)

#### Investigative body / Lawful investigations

The Court dismissed the applicant’s application for judicial review of the decision of the Correctional Service to Canada to deny, in part, the applicant’s request for personal information contained in information bank “Preventive Security Records” on the basis of paras. 22(1)(a), 24(b) and s. 26 of the

*Privacy Act*. The right of access given to any person to his personal information must be exercised in light of several considerations: the right of others to the privacy of their own data, due respect for confidentiality and the lawful execution of investigations pertaining to the prevention of crime and the enforcement of laws in Canada. Upon examination of all the documents in question, the Court did not find that the institution had not properly exercised its discretion.

*Longaphy v. Canada (Solicitor General)*, [1995] F.C.J. No. 1429 (QL) (F.C.T.D.), T-2959-94, order dated October 27, 1995.

**See also:** *PA* ss. 24(b), 26.

## **Paragraph 22(1)(b)**

### **Information relating to existence or nature of investigation**

The information contained in a specific bank relating to applications and assessments for Canadian citizenship was held to be properly exempt pursuant to both subpara. 22(1)(b)(i) and subpara. 22(1)(b)(iii).

*Reyes v. Canada (Secretary of State)* (1984), 9 Admin. L.R. 296 (F.C.T.D.).

**See also:** *PA* ss. 2, 51.

### **Protection of informer's identity**

The substantive common law rule against disclosure of the identity of police informers is not abrogated by this section.

*Davidson v. Canada (Solicitor General)*, [1989] 2 F.C. 341 (C.A.).

**See also:** *PA* ss. 16, 45, 52; *ATIA* s. 2.

### **Information obtained or prepared in course of investigation**

Information relating to applications and assessments for Canadian citizenship are exempt under this section.

*Reyes v. Canada (Secretary of State)* (1984), 9 Admin. L.R. 296 (F.C.T.D.).

**See also:** *PA* ss. 2, 51.

### **Content of affidavit to support exemption**

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*” was held not to be sufficient because it was not an explanation but a conclusion. 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.

*Kaiser v. Canada (Minister of National Revenue)*, T-1516-93, decision dated June 13, 1995, F.C.T.D., not reported.

## Injury test

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) *Privacy Act* 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.

*Canada (Privacy Commissioner) v. Canada (Labour Relations Board)*, [1996] 3 F.C. 609; (1996), 118 F.T.R. 1; 41 Admin. L.R. (2d) 49 (T.D.).

**To note:** This case is under appeal.

## Names of informants

The names of informants, as well as other information which would likely identify the informants, were correctly exempted from release following a request under the *PA* by an individual who was to be deported for allegedly working illegally and committing welfare fraud.

*Karakulak v. Canada (Minister of Citizenship and Immigration)* (1996), 119 F.T.R. 288 (F.C.T.D.).

## Release of documents more than 20 years old

There was uncontradicted evidence that probable harm would occur with the release of documents 20-25 years old. The Court cannot substitute its view for that of CSIS or the Solicitor General about the assessment of the reasonable expectation of probable injury. The affiant’s uncertainty in specifying a particular injury did not affect the Judge’s decision that the test of reasonable probability was met under para. 22(1)(b). It was sufficient that the affiant outlined the types of potential injury to sources, targets and operations if information currently withheld were disclosed.

*Ruby v. Canada (Royal Canadian Mounted Police)*, [1998] 2 F.C. 351 (T.D.).

**To note:** This case is under appeal.

**See also:** *PA* ss. 8, 16, 18, 19, 26, 46, 48, 49, 52

## “Conduct of lawful investigations” / Injury to specific investigation

Paragraph 22(1)(b) can be relied upon only where there is specific and significant evidence of injury to a specific lawful investigation that has been undertaken or that is about to be undertaken. One cannot refuse to disclose information under para. 22(1)(b) on the basis that to disclose would have a “chilling” effect on possible future investigations. The onus is on the head of the institution to establish, on a balance of probabilities, that there is a reasonable expectation of probable harm to disclose the specific information. There must be a clear and direct link between the disclosure of specific information and the harm alleged. The Court followed the decision in *Rubin v. Canada (Minister of Transport)* (1997), 221 N.R. 145 (F.C.A.).

*Canada (Information Commissioner) v. Canada (Immigration and Refugee Board)* (1997), 140 F.T.R. 140 (F.C.T.D.).

**To note:** Given his decision on para. 22(1)(b), the Trial Judge found it unnecessary to deal with the issue of the evidentiary requirements necessary to prove reasonable expectation of probable harm that disclosure would cause.

**See also:** *PA* s. 2; *ATIA* ss. 2, 16(1)(c).

## **Undertakings of confidentiality not overriding *Privacy Act***

The undertaking of confidentiality between the interviewer and the interviewees was conditional on the notes remaining under the control and possession of the interviewer. Once the notes were provided to the Immigration and Refugee Board upon its request, the notes were under the control of the institution. The assurances of confidentiality did not override the Act.

*Canada (Information Commissioner) v. Canada (Immigration and Refugee Board)* (1997), 140 F.T.R. 140 (F.C.T.D.).

**See also:** *PA* s. 2; *ATIA* ss. 2, 16(1)(c).

Assurances of confidentiality are not essential as the respondent has the power to issue *subpoenas*, if necessary. The Court added that witnesses to investigations should be informed in advance that their testimony about an individual may be disclosed to the individual in accordance with the *Privacy Act*.

*Lavigne v. Canada (Commissioner of Official Languages)*, [1998] F.C.J. No. 1527, T-909-97, order dated October 16, 1998.

**To note:** This case is under appeal.

**See also:** *PA* ss. 2, 3(g).

## **Specific investigation over**

The applicant sought access to interview notes taken by investigators of the Office of the Commissioner of Official Languages (OCOL) in the course of their investigation relating to the applicant's complaints as to the language of work. The Commissioner refused to release part of the information sought on the ground that disclosure would be injurious to the conduct of its investigations and on the basis of ss. 60, 72, 73 and 74 of the *Official Languages Act* which deal with the confidentiality and disclosure of information obtained during an investigation by OCOL. The Court reiterated the principles set out in previous caselaw to the effect that the para. 22(1)(b) exemption is a limited and specific one that relates to an ongoing investigation, undertaken or about to be undertaken. Here, the investigation was over.

*Lavigne v. Canada (Commissioner of Official Languages)*, [1998] F.C.J. No. 1527, T-909-97, order dated October 16, 1998.

**To note:** This case is under appeal.

**See also:** *PA* ss. 2, 3(g).

## **Information obtained during investigation subject to disclosure**

The applicant sought access to interview notes taken by investigators of the Office of the Commissioner of Official Languages (OCOL) in the course of their investigation relating to the applicant's complaints as to the language of work. The Commissioner refused to release part of the information sought on the basis of para. 22(1)(b) and ss. 60, 72, 73 and 74 of the *Official Languages Act* which deal with the confidentiality and disclosure of information obtained during an investigation by OCOL. The Court referred to the Federal Court of Appeal decision in *Rubin v. Canada (Clerk of the Privy Council)*, [1994] 2 F.C. 707 and noted that the Federal Court "made it very clear, in that decision that representations made in the course of an investigation, during as well as subsequent to it, may be released if a statute requires it or allows it".

*Lavigne v. Canada (Commissioner of Official Languages)*, [1998] F.C.J. No. 1527, T-909-97, order dated October 16, 1998.

**To note:** This case is under appeal.

**See also:** *PA* ss. 2, 3(g).

## **Subsection 22(2)**

### **Release authorized after termination of agreement which prohibited release of the information**

The RCMP had exempted the requested information under subs. 22(2) and s. 26 *PA*. During the hearing, the respondent indicated that the agreement between the RCMP and the province of British Columbia had terminated. It was due to this agreement that most of the information had been exempted.

The Court stated that it considers its role regarding an application under s. 41 is not to order production of information, the release of which had earlier been refused, even when the law had changed so that its release was no longer prohibited when the application is heard. However, in this case and with the consent of the respondent the Court ordered that some information originally withheld from release be produced.

*Thorsteinson v. Canada*, [1994] F.C.J. No. 1621 (QL) (F.C.T.D.), T-1040-93, decision dated October 31, 1994.

### **RCMP information cannot be disclosed for the purpose of verifying whether the information is accurate**

The applicant wanted an opportunity to see records about himself held by the RCMP because he believed they contained inaccurate information and he wanted to be able to ask for suitable corrections. The RCMP would not provide the records because they were exempted under subpara. 22(1)(a)(ii) and subs. 22(2) of the *PA*.

The Court concluded that the documents fell within the exemptions claimed and that the necessary agreement as referred to in subs. 22(2) was proved. Whether the material in question contained inaccurate information or not, it could not be made available to the applicant.

*Bires v. Canada (Solicitor General)*, [1994] F.C.J. No. 1334 (QL) (F.C.T.D.), T-3053-93, decision dated September 14, 1994.

## **Subsection 22(3)**

### **Definition of “investigation”**

Where a requester sought access to the reasons for his discharge from the Armed Forces and the relevant institution undertook an investigation to answer the request, such an investigation falls within this section, having been undertaken on behalf of the Minister of National Defence in the administration of the *National Defence Act*.

*Muller v. Canada (Minister of Communications)*, [1989] F.C.J. No. 925 (QL) (F.C.A.), A-30-89, decision dated October 12, 1989.

**See also annotations under s. 16 *ATIA*.**

## SECTION 23

### Security clearances

23. The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) that was obtained or prepared by an investigative body specified in the regulations for the purpose of determining whether to grant security clearances

(a) required by the Government of Canada or a government institution in respect of individuals employed by or performing services for the Government of Canada or a government institution, individuals employed by or performing services for a person or body performing services for the Government of Canada or government institution, individuals seeking to be so employed or seeking to perform those services, or

(b) required by the government of a province or a foreign state or an institution thereof,

if disclosure of the information could reasonably be expected to reveal the identity of the individual who furnished the investigative body with the information.

Legislative History: 1980-81-82-83, c. 111, Sch. II “23”.

## SECTION 24

### Individuals sentenced for an offence

24. The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) that was collected or obtained by the Correctional Service of Canada or the National Parole Board while the individual who made the request was under sentence for an offence against any Act of Parliament, if the disclosure could reasonably be expected to

(a) lead to a serious disruption of the individual’s institutional, parole or statutory release program; or

(b) reveal information about the individual originally obtained on a promise of confidentiality, express or implied.

Legislative History: 1980-81-82-83, c. 111, Sch. II “24”.

---

## JURISPRUDENCE

### Paragraph 24(b)

#### Due respect for confidentiality

The Court dismissed the applicant’s application for judicial review of the decision of the Correctional Service of Canada to deny, in part, the applicant’s request for personal information contained in information bank “Preventive Security Records” on the basis of paras. 22(1)(a), 24(b) and s. 26 of the *Privacy Act*. The right of access given to any person to his personal information must be exercised in light of several considerations: the right of others to the privacy of their own data, due respect for confidentiality and the lawful execution of investigations pertaining to the prevention of crime and the enforcement of laws in Canada. Upon examination of all the documents in question, the Court did not find that the institution had not properly exercised its discretion.

*Longaphy v. Canada (Solicitor General)*, [1995] F.C.J. No. 1429 (QL) (F.C.T.D.), T-2959-94, order dated October 27, 1995.

**See also:** *PA* ss. 22(1)(a), 26.

## SECTION 25

### Safety of individuals

**25.** The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) the disclosure of which could reasonably be expected to threaten the safety of individuals.

Legislative History: 1980-81-82-83, c. 111, Sch. II “25”.

---

## JURISPRUDENCE

**See annotations under s. 17 ATIA.**

## SECTION 26

### Information about another individual

**26.** The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) about an individual other than the individual who made the request, and shall refuse to disclose such information where the disclosure is prohibited under section 8.

Legislative History: 1980-81-82-83, c. 111, Sch. II “26”

---

## JURISPRUDENCE

### Right of others to privacy of their own data

The Court dismissed the applicant’s application for judicial review of the decision of the Correctional Service of Canada to deny, in part, the applicant’s request for personal information contained in information bank “Preventive Security Records” on the basis of paras. 22(1)(a), 24(b) and s. 26 of the *Privacy Act*. The right of access given to any person to his personal information must be exercised in light of several considerations: the right of others to the privacy of their own data, due respect for confidentiality and the lawful execution of investigations pertaining to the prevention of crime and the enforcement of laws in Canada. Upon examination of all the documents in question, the Court did not find that the institution had not properly exercised its discretion.

*Longaphy v. Canada (Solicitor General)*, [1995] F.C.J. No. 1429 (QL) (F.C.T.D.), T-2959-94, order dated October 27, 1995.

**See also:** *PA* ss. 22(1)(a), 24(b).



## Names of informants

The names of informants, as well as other information which would likely identify the informants, were correctly exempted from release following a request under the *PA* by an individual who was to be deported for allegedly working illegally and committing welfare fraud.

*Karakulak v. Canada (Minister of Citizenship and Immigration)* (1996), 119 F.T.R. 288 (F.C.T.D.).

## No obligation to consider para. 8(2)(m) grounds

A proper exercise of the discretion under s. 26 does not require the head of the institution to consider para. 8(2)(m) before refusing to disclose the information.

*Ruby v. Canada (Royal Canadian Mounted Police)*, [1998] 2 F.C. 351 (T.D.).

**To note:** This case is under appeal.

**See also:** *PA* ss. 8, 16, 18, 19, 22, 46, 48, 49, 52.

## Right to one's personal information not paramount

An applicant's right to personal information about himself is not paramount to the discretionary exemption conferred on the head of the institution under s. 26. Specifically, when the information is about both the person making the request and another person, the head of the institution has the discretion to exempt from disclosure the other person's personal information. The Court reiterated the two-step analysis regarding the exercise of discretion set out in *Kelly v. Canada (Solicitor General)* (1992), 53 F.T.R. 147 (F.C.T.D.); aff'd (1993), 154 N.R. 319 (F.C.A.).

*Mislan v. Canada (Minister of National Revenue)*, [1998] F.C.J. No. 70 (QL) (F.C.T.D.), T-2790-96, order dated May 22, 1998.

.

**See also:** *PA* s. 3.

**See also annotations under s. 8 *PA* and s. 19 *ATIA*.**

## SECTION 27

### Solicitor-client privilege

**27.** The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) that is subject to solicitor-client privilege.

Legislative History: 1980-81-82-83, c. 111, Sch. II "27".

---

## JURISPRUDENCE

**See annotations under s. 23 *ATIA*.**

## SECTION 28

### Medical record

**28.** The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) that relates to the physical or mental health of the individual who requested it where the examination of the information by the individual would be contrary to the best interests of the individual.

Legislative History: 1980-81-82-83, c. 111, Sch. II “28”.

## SECTION 29

### Receipt and investigation of complaints

**29.** (1) Subject to this Act, the Privacy Commissioner shall receive and investigate complaints

- (a) from individuals who allege that personal information about themselves held by a government institution has been used or disclosed otherwise than in accordance with section 7 or 8;
- (b) from individuals who have been refused access to personal information requested under subsection 12(1);
- (c) from individuals who allege that they are not being accorded the rights to which they are entitled under subsection 12(2) or that corrections of personal information requested under paragraph 12(2)(a) are being refused without justification;
- (d) from individuals who have requested access to personal information in respect of which a time limit has been extended pursuant to section 15 where they consider the extension unreasonable;
- (e) from individuals who have not been given access to personal information in the official language requested by the individuals under subsection 17(2);
- (e.1) from individuals who have not been given access to personal information in an alternative format pursuant to a request made under subsection 17(3);
- (f) from individuals who have been required to pay a fee that they consider inappropriate;
- (g) in respect of the index referred to in subsection 11(1); or
- (h) in respect of any other matter relating to
  - (i) the collection, retention or disposal of personal information by a government institution,
  - (ii) the use or disclosure of personal information under the control of a government institution, or
  - (iii) requesting or obtaining access under subsection 12(1) to personal information.

### Complaints submitted on behalf of complainants

(2) Nothing in this Act precludes the Privacy Commissioner from receiving and investigating complaints of a nature described in subsection (1) that are submitted by a person authorized by the complainant to act on behalf of the complainant, and a reference to a complainant in any other section includes a reference to a person so authorized.

### Privacy Commissioner may initiate complaint

(3) Where the Privacy Commissioner is satisfied that there are reasonable grounds to investigate a matter under this Act, the Commissioner may initiate a complaint in respect thereof.

Legislative History: R.S., 1985, c. P-21, s. 29; 1992, c. 21, s. 37.

---

## JURISPRUDENCE

### Jurisdiction of Court premised on complaint to Commissioner / Whether deemed refusal proper subject-matter of complaint

The Court dismissed an application for a declaration that the applicant's rights under the *Privacy Act* to receive a response within 30 days or to be given notice of an extension of time were infringed. Under subs. 16(3), the failure to reply in accordance with the time limits constitutes a "deemed refusal". The Court held that although a deemed refusal was not specifically listed under s. 29 as one of the circumstances in which a complaint can be made to the Commissioner (unlike an actual refusal or an alleged unreasonable extension of time), it nevertheless fell within the words of subpara. 29(1)(h)(i) of the Act ("the collection, retention or disposal of personal information by a government institution"). Since s. 41 clearly contemplates complaints being made, first, to the Privacy Commissioner before any application for relief can be made to the Court. Since the applicant had not made any complaint to the Commissioner, the Court was without jurisdiction to grant the relief sought.

*Cunha v. M.N.R.*, [1999] F.C.J. No. 667 (Q.L.) (F.C.T.D.), T-1023-98, order dated March 5, 1999.

See also: *PA* ss. 14, 15, 16, 41.

See also annotations under s. 30 *ATIA*.

## SECTION 30

### Written complaint

**30.** A complaint under this Act shall be made to the Privacy Commissioner in writing unless the Commissioner authorizes otherwise.

Legislative History: 1980-81-82-83, c. 111, Sch. II "30".

## SECTION 31

### Notice of intention to investigate

**31.** Before commencing an investigation of a complaint under this Act, the Privacy Commissioner shall notify the head of the government institution concerned of the intention to carry out the investigation and shall inform the head of the institution of the substance of the complaint.

Legislative History: 1980-81-82-83, c.111, Sch. II "31".

## SECTION 32

### Regulation of procedure

**32.** Subject to this Act, the Privacy Commissioner may determine the procedure to be followed in the performance of any duty or function of the Commissioner under this Act.

Legislative History: 1980-81-82-83, c. 111, Sch. II “32”.

---

## JURISPRUDENCE

See annotations under s. 34 ATIA.

## SECTION 33

### Investigations in private

**33.** (1) Every investigation of a complaint under this Act by the Privacy Commissioner shall be conducted in private.

### Right to make representation

(2) In the course of an investigation of a complaint under this Act by the Privacy Commissioner, the person who made the complaint and the head of the government institution concerned shall be given an opportunity to make representations to the Commissioner, but no one is entitled as of right to be present during, to have access to or to comment on representations made to the Commissioner by any other person.

Legislative History: 1980-81-82-83, c. 111, Sch. II “33”.

---

## JURISPRUDENCE

See annotations under s. 35 ATIA.

## SECTION 34

### Powers of Privacy Commissioner in carrying out investigations

**34.** (1) The Privacy Commissioner has, in relation to the carrying out of the investigation of any complaint under this Act, power

- (a) to summon and enforce the appearance of persons before the Privacy Commissioner and compel them to give oral or written evidence on oath and to produce such documents and things as the Commissioner deems requisite to the full investigation and consideration of the complaint, in the same manner and to the same extent as a superior court of record;
- (b) to administer oaths;
- (c) to receive and accept such evidence and other information, whether on oath or by affidavit or otherwise, as the Privacy Commissioner sees fit, whether or not the evidence or information is or would be admissible in a court of law;
- (d) to enter any premises occupied by any government institution on satisfying any security requirements of the institution relating to the premises;

(e) to converse in private with any person in any premises entered pursuant to paragraph (d) and otherwise carry out therein such inquiries within the authority of the Privacy Commissioner under this Act as the Commissioner sees fit; and

(f) to examine or obtain copies of or extracts from books or other records found in any premises entered pursuant to paragraph (d) containing any matter relevant to the investigation.

#### Access to information

(2) Notwithstanding any other Act of Parliament or any privilege under the law of evidence, the Privacy Commissioner may, during the investigation of any complaint under this Act, examine any information recorded in any form under the control of a government institution, other than a confidence of the Queen's Privy Council for Canada to which subsection 70(1) applies, and no information that the Commissioner may examine under this subsection may be withheld from the Commissioner on any grounds.

#### Evidence in other proceedings

(3) Except in a prosecution of a person for an offence under section 131 of the *Criminal Code* (perjury) in respect of a statement made under this Act, in a prosecution for an offence under this Act or in a review before the Court under this Act or an appeal therefrom, evidence given by a person in proceedings under this Act and evidence of the existence of the proceedings is inadmissible against that person in a court or in any other proceedings.

#### Witness fees

(4) Any person summoned to appear before the Privacy Commissioner pursuant to this section is entitled in the discretion of the Commissioner to receive the like fees and allowances for so doing as if summoned to attend before the Federal Court.

#### Return of documents, etc.

(5) Any document or thing produced pursuant to this section by any person or government institution shall be returned by the Privacy Commissioner within ten days after a request is made to the Commissioner by that person or government institution, but nothing in this subsection precludes the Commissioner from again requiring its production in accordance with this section.

Legislative History: R.S., 1985, c. P-21, s. 34; R.S., 1985, c. 27 (1st Supp.), s. 187.

## SECTION 35

#### Findings and recommendations of Privacy Commissioner

**35.** (1) If, on investigating a complaint under this Act in respect of personal information, the Privacy Commissioner finds that the complaint is well-founded, the Commissioner shall provide the head of the government institution that has control of the personal information with a report containing

- (a) the findings of the investigation and any recommendations that the Commissioner considers appropriate; and
- (b) where appropriate, a request that, within a time specified therein, notice be given to the Commissioner of any action taken or proposed to be taken to implement the recommendations contained in the report or reasons why no such action has been or is proposed to be taken.

#### Report to complainant

(2) The Privacy Commissioner shall, after investigating a complaint under this Act, report to the complainant the results of the investigation, but where a notice has been requested under paragraph (1)(b) no report shall be made under this subsection until the expiration of the time within which the notice is to be given to the Commissioner.

#### Matter to be included in report to complainant

(3) Where a notice has been requested under paragraph (1)(b) but no such notice is received by the Commissioner within the time specified therefor or the action described in the notice is, in the opinion of the Commissioner, inadequate or inappropriate or will not be taken in a reasonable time, the Commissioner shall so advise the complainant in his report under subsection (2) and may include in the report such comments on the matter as he thinks fit.

#### Access to be given

(4) Where, pursuant to a request under paragraph (1)(b), the head of a government institution gives notice to the Privacy Commissioner that access to personal information will be given to a complainant, the head of the institution shall give the complainant access to the information forthwith on giving the notice.

#### Right of review

(5) Where, following the investigation of a complaint relating to a refusal to give access to personal information under this Act, access is not given to the complainant, the Privacy Commissioner shall inform the complainant that the complainant has the right to apply to the Court for a review of the matter investigated.

Legislative History: 1980-81-82-83, c. 111, Sch. II “35”.

---

## JURISPRUDENCE

See annotations under s. 37 ATIA.

## SECTION 36

#### Investigation of exempt banks

**36.** (1) The Privacy Commissioner may, from time to time at the discretion of the Commissioner, carry out investigations of the files contained in personal information banks designated as exempt banks under section 18.

#### Sections 31 to 34 apply

(2) Sections 31 to 34 apply, where appropriate and with such modifications as the circumstances require, in respect of investigations carried out under subsection (1).

#### Report of findings and recommendations

(3) If, following an investigation under subsection (1), the Privacy Commissioner considers that any file contained in a personal information bank should not be contained therein within the terms of the order designating the bank as an exempt bank, the Commissioner shall provide the head of the government institution that has control of the bank with a report containing

(a) the findings of the Commissioner and any recommendations that the Commissioner considers appropriate; and

(b) where appropriate, a request that, within a time specified therein, notice be given to the Commissioner of any action taken or proposed to be taken to implement the recommendations or reasons why no such action has been or is proposed to be taken.

#### Reports to be included in annual or special reports to Parliament

(4) Any report made by the Privacy Commissioner under subsection (3), together with any notice given to the Commissioner in response thereto, may be included in a report made pursuant to section 38 or 39.

#### Review of exempt banks by Court

(5) Where the Privacy Commissioner requests a notice under paragraph (3)(b) in respect of any file contained in a personal information bank designated under section 18 as an exempt bank and no notice is received within the time specified therefor or the action described in the notice is, in the opinion of the Commissioner, inadequate or inappropriate or will not be taken in a reasonable time, the Privacy Commissioner may make an application to the Court under section 43.

Legislative History: 1980-81-82-83, c. 111, Sch. II “36”.

## SECTION 37

#### Investigation in respect of sections 4 to 8

**37.** (1) The Privacy Commissioner may, from time to time at the discretion of the Commissioner, carry out investigations in respect of personal information under the control of government institutions to ensure compliance with sections 4 to 8.

#### Sections 31 to 34 apply

(2) Sections 31 to 34 apply, where appropriate and with such modifications as the circumstances require, in respect of investigations carried out under subsection (1).

#### Report of findings and recommendations

(3) If, following an investigation under subsection (1), the Privacy Commissioner considers that a government institution has not complied with sections 4 to 8, the Commissioner shall provide the head of the institution with a report containing the findings of the investigation and any recommendations that the Commissioner considers appropriate.

#### Reports to be included in annual or special reports

(4) Any report made by the Privacy Commissioner under subsection (3) may be included in a report made pursuant to section 38 or 39.

Legislative History: 1980-81-82-83, c. 111, Sch. II “37”.

## SECTION 38

#### Annual report

**38.** The Privacy Commissioner shall, within three months after the termination of each financial year, submit an annual report to Parliament on the activities of the office during that financial year.

Legislative History: 1980-81-82-83, c. 111, Sch. II “38”.

## SECTION 39

### Special reports

**39.** (1) The Privacy Commissioner may, at any time, make a special report to Parliament referring to and commenting on any matter within the scope of the powers, duties and functions of the Commissioner where, in the opinion of the Commissioner, the matter is of such urgency or importance that a report thereon should not be deferred until the time provided for transmission of the next annual report of the Commissioner under section 38.

### Where investigation made

(2) Any report made pursuant to subsection (1) that relates to an investigation under this Act shall be made only after the procedures set out in section 35, 36 or 37 have been followed in respect of the investigation.

Legislative History: 1980-81-82-83, c.111, Sch. II “39”.

## SECTION 40

### Transmission of reports

**40.** (1) Every report to Parliament made by the Privacy Commissioner under section 38 or 39 shall be made by being transmitted to the Speaker of the Senate and to the Speaker of the House of Commons for tabling in those Houses.

### Reference to Parliamentary committee

(2) Every report referred to in subsection (1) shall, after it is transmitted for tabling pursuant to that subsection, be referred to the committee designated or established by Parliament for the purpose of subsection 75(1).

Legislative History: 1980-81-82-83, c. 111, Sch. II “40”.

## SECTION 41

### Review by Federal Court where access refused

**41.** Any individual who has been refused access to personal information requested under subsection 12(1) may, if a complaint has been made to the Privacy Commissioner in respect of the refusal, apply to the Court for a review of the matter within forty-five days after the time the results of an investigation of the complaint by the Privacy Commissioner are reported to the complainant under subsection 35(2) or within such further time as the Court may, either before or after the expiration of those forty-five days, fix or allow.

Legislative History: 1980-81-82-83, c. 111, Sch. II “41”.

---

## JURISPRUDENCE

### Improper disclosure of personal information

The applicant had complained that the respondent Department had improperly used and disclosed his personal information. It appears that he also sought a review of the decision of the Privacy Commissioner who had held that the disclosure was pursuant to para. 8(2)(a) PA. One branch of the



respondent Department had disclosed his personal information to another branch of the Department so that an official could respond to the applicant's correspondence. The Court agreed with the respondent that it did not have jurisdiction to review allegations of improper disclosure of personal information.

*Gauthier v. Canada (Minister of Consumer and Corporate Affairs)* (1992), 58 F.T.R. 161 (F.C.T.D.).

### **Court's authority regarding exempt banks**

In an application under this section, the Court is entitled to ascertain whether there is a file respecting an applicant in an exempt bank and, if so, whether it is properly included therein. The powers of the Court are not circumscribed by virtue of the specific reference to rights ascribed to the Privacy Commissioner under s. 36 (investigation of exempt banks) and s. 43 (application for court review of exempt banks).

*Ternette v. Canada (Solicitor General)*, [1984] 2 F.C. 486 (T.D.).

**See also:** PA ss. 16, 18.

### **Failure to complain**

Where the applicant failed to complain to the Privacy Commissioner as required by this section, where what was sought was not the applicant's personal information and, in any event, when the file in question no longer existed, an extension for time to file an application for review cannot be granted.

*Byer v. Canada (Minister of External Affairs)*, 86-T-615, decision dated April 10, 1987, F.C.T.D., not reported; aff'd A-300-87, decision dated June 10, 1988, F.C.A. not reported. Application for leave to appeal to the S.C.C. dismissed December 8, 1988.

### **Privacy Commissioner as respondent**

The Trial Division of the Federal Court dismissed an application to remove the Privacy Commissioner as a respondent in the proceedings on the ground that, in supporting the CSIS decision not to disclose the personal information requested by the applicant, CSIS' refusal is in part conditioned by the Commissioner. According to the Court, the review of the refusal contemplated by s. 41 encompasses the decision of the Commissioner in supporting or condoning the refusal as well as the refusal itself.

*Moar v. Canada (Privacy Commissioner)*, [1992] 1 F.C. 501; (1991), 45 F.T.R. 57 (T.D.).

### **Release authorized after termination of agreement which prohibited release of the information**

The RCMP had exempted the requested information under subs. 22(2) and s. 26 PA. During the hearing, the respondent indicated that the agreement between the RCMP and the province of British Columbia had terminated. It was due to this agreement that most of the information had been exempted.

The Court stated that it considers its role upon an application under s. 41 is not to order production of information, the release of which had earlier been refused, even when the law had changed so that its release was no longer prohibited when the application is heard. However, in this case and with the consent of the respondent, the Court ordered that some information originally withheld from release be produced.

*Thorsteinson v. Canada*, [1994] F.C.J. No. 1621 (QL) (F.C.T.D.), T-1040-93, decision dated October 31, 1994.

### **No recourse to prerogative writs**

The special procedure provided under s. 41 of the *PA* for seeking a review of a refusal to give access to personal information does not contemplate the use of prerogative writs or remedies in the nature of prerogative writs.

*Kelly v. Canada (Solicitor General)* (1992), 53 F.T.R. 147 (F.C.T.D.); aff'd (1993), 154 N.R. 319 (F.C.A.).

### **No remedy for improper disclosure**

The applicant moved for a review of the respondents' decision to release documents on the basis that they were improperly disclosed. The applicant submitted that the documents were made public as part of a trial brief but that he himself was denied access to his personal information under the *PA*. The jurisdiction of the Federal Court under s. 41 is restricted to refusals to disclose documents. In addition the remedies under ss. 48 and 49 of the *PA* are only for refusals to give access.

*Chandran v. Canada (Minister of Employment and Immigration)* (1995), 91 F.T.R. 90 (F.C.T.D.).

**See also:** *PA* ss. 8, 48, 49.

### **Role of Court where documents non existent**

The applicant sought a review of the decision of the Commissioner of Official Languages who refused to release a draft document (the preliminary report) and a fax. The preliminary report had not been kept on file and had been destroyed pursuant to the respondent's internal procedures relating to draft documents. As to the fax, the respondent had argued that it did not exist or may never have existed, and therefore, had never been filed. Given those facts, the best the Court could do is infer whether the preliminary report and the final report (which had been released to the applicant) may have likely been different with respect to the personal information contained therein.

*Rogers v. Canada (Commissioner of Official Languages)*, [1998] F.C.J. No. 1909 (QL) (F.C.T.D.), T-2634-97, order dated December 30, 1998.

**See also:** *PA* s. 6.

### **Cross-examination of affiant**

The applicant's motion to have the respondent's affiant appear for cross-examination was refused. The time limit for conducting cross-examinations on affidavits had expired under the *Federal Court Rules, 1998*; cross-examination was unnecessary for a fair and thorough review of the s. 41 *PA* application and was more likely to impede and confuse the proceedings.

*Chen v. Canada (Canadian Security Intelligence Service)*, T-1904-98, order dated March 3, 1999, not reported.

**To note:** The application to vary the order dated March 3, 1999 was dismissed: *Chen v. Canada (Canadian Security Intelligence Service)*, T-1904-98, order dated March 24, 1999, not reported.

### **Jurisdiction of Court premised on complaint to Commissioner / Whether deemed refusal proper subject-matter of complaint**

The Court dismissed an application for a declaration that the applicant's rights under the *Privacy Act* to receive a response within 30 days or to be given notice of an extension of time were infringed. Under

subs. 16(3), the failure to reply in accordance with the time limits constitutes a “deemed refusal”. The Court held that although a deemed refusal was not specifically listed under s. 29 as one of the circumstances in which a complaint can be made to the Commissioner (unlike an actual refusal or an alleged unreasonable extension of time), it nevertheless fell within the words of subpara. 29(1)(h)(i) of the Act (“the collection, retention or disposal of personal information by a government institution”). Since s. 41 clearly contemplates complaints being made, first, to the Privacy Commissioner before any application for relief can be made to the Court. Since the applicant had not made any complaint to the Commissioner, the Court was without jurisdiction to grant the relief sought.

*Cunha v. M.N.R.*, [1999] F.C.J. No. 667 (Q.L.) (F.C.T.D.), T-1023-98, order dated March 5, 1999.

**See also:** PA ss. 14, 15, 16, 29.

**See also annotations under s. 41 ATIA.**

## SECTION 42

Privacy Commissioner may apply or appear

42. The Privacy Commissioner may

- (a) apply to the Court, within the time limits prescribed by section 41, for a review of any refusal to disclose personal information requested under subsection 12(1) in respect of which an investigation has been carried out by the Privacy Commissioner, if the Commissioner has the consent of the individual who requested access to the information;
- (b) appear before the Court on behalf of any individual who has applied for a review under section 41; or
- (c) with leave of the Court, appear as a party to any review applied for under section 41.

Legislative History: 1980-81-82-83, c. 111, Sch. II “42”.

---

## JURISPRUDENCE

**See annotations under s. 42 ATIA.**

## SECTION 43

Application respecting files in exempt banks

43. In the circumstances described in subsection 36(5), the Privacy Commissioner may apply to the Court for a review of any file contained in a personal information bank designated as an exempt bank under section 18.

Legislative History: 1980-81-82-83, c. 111, Sch. II “43”.

## SECTION 44

Hearing in summary way

44. An application made under section 41, 42 or 43 shall be heard and determined in a summary way in accordance with any special rules made in respect of such applications pursuant to section 46 of the *Federal Court Act*.

Legislative History: 1980-81-82-83, c. 111, Sch. II “44”.

## SECTION 45

### Access to information

**45.** Notwithstanding any other Act of Parliament or any privilege under the law of evidence, the Court may, in the course of any proceedings before the Court arising from an application under section 41, 42 or 43, examine any information recorded in any form under the control of a government institution, other than a confidence of the Queen’s Privy Council for Canada to which subsection 70(1) applies, and no information that the Court may examine under this section may be withheld from the Court on any grounds.

Legislative History: 1980-81-82-83, c. 111, Sch. II “45”.

---

## JURISPRUDENCE

### *Canada Evidence Act*

The Court’s power to compel production and examine information which is the subject of an application under the Act is not superseded by s. 36.1 of the *Canada Evidence Act* (now s. 37: Crown objection to disclosure on the basis of public interest).

*Davidson v. Canada (Solicitor General)*, [1989] 2 F.C. 341 (C.A.).

**See also:** *PA* ss. 16, 22, 52; *ATIA* s. 2.

A certificate filed pursuant to s. 36.1 of the *Canada Evidence Act* is of no effect in an application for review under the *PA*.

*Gold v. Canada (Minister of National Revenue)* (1989), 103 N.R. 156 (F.C.A.).

**To note:** The authority for this ruling is set out in *Davidson v. Canada (Solicitor General)*, [1987] 3 F.C. 15 (T.D.); aff’d [1989] 2 F.C. 341 (C.A.).

## SECTION 46

### Court to take precautions against disclosing

**46.** (1) In any proceedings before the Court arising from an application under section 41, 42 or 43, the Court shall take every reasonable precaution, including, when appropriate, receiving representations *ex parte* and conducting hearings *in camera*, to avoid the disclosure by the Court or any person of

(a) any information or other material that the head of a government institution would be authorized to refuse to disclose if it were requested under subsection 12(1) or contained in a record requested under the Access to Information Act; or

(b) any information as to whether personal information exists where the head of a government institution, in refusing to disclose the personal information under this Act, does not indicate whether it exists.

(2) The Court may disclose to the appropriate authority information relating to the commission of an offence against any law of Canada or a province on the part of any officer or employee of a government institution, if in the opinion of the Court there is evidence thereof.

Legislative History: 1980-81-82-83, c. 111, Sch. II “46”.

---

## JURISPRUDENCE

### Precautions against disclosure

In taking precautions against disclosure, the Court ordered that prior to release, certain documents be edited to protect the identity of the source of the information.

*Muller v. Canada (Minister of Communications)*, [1989] F.C.J. No. 925 (QL) (F.C.A.), A-30-89, decision dated October 12, 1989.

**To note:** The Federal Court of Appeal referred this matter back to the Trial Division which reviewed the documents in question and deleted such portions as were necessary to protect the identity of the source of the information: *Muller v. Canada (Minister of Communications)*, [1990] F.C.J. No. 17 (QL) (F.C.T.D.), T-484-88, decision dated January 9, 1990.

**See also:** *PA* s. 22.

### No indication as to whether information exists

The very acknowledgement that information exists could compromise the security of Canada. The imperative under para. 46(1)(b) that the respondent is not obliged to reveal whether or not it has any personal information about the applicant is justified by the respondent’s own governing legislation and more importantly by s. 1 of the *Canadian Charter of Rights and Freedoms*.

*Zanganeh v. Canada (Canadian Security Intelligence Service)*, [1989] 1 F.C. 244 (T.D.).

**See also:** *PA* ss. 16, 51, 52.

### Court required to take precautions

The Court is required to take precautions against disclosing information that a head of a government institution is authorized to refuse to disclose. Where that authority is claimed then the information is not to be disclosed pending review of that authority by the Court.

*Arkell v. Canada (Solicitor General)* (1992), 56 F.T.R. 161 (F.C.T.D.).

### Ex parte process essential

While under s. 46 there is a discretion as to whether to receive representations *ex parte*, that section also requires that when the head of the institution does not indicate whether the information exists, the Court is to take every reasonable precaution to avoid the disclosure of any information that the head of the government institution is authorized to refuse to disclose or any information as to whether personal information exists. To satisfy the requirements of s. 46, reception of the evidence on an *ex parte* basis is an essential process for the Court to examine and satisfy itself of the basis for any refusal to disclose any information. This is now an accepted process for *Privacy Act* and *Access to Information Act* proceedings.

*Ruby v. Canada (Royal Canadian Mounted Police)*, [1998] 2 F.C. 351 (T.D.).

**To note:** This case is under appeal.

**See also:** *PA* ss. 8, 16, 18, 19, 22, 26, 48, 49, 52.

**See also annotations under s. 47 ATIA.**

## SECTION 47

### Burden of proof

**47.** In any proceedings before the Court arising from an application under section 41, 42 or 43, the burden of establishing that the head of a government institution is authorized to refuse to disclose personal information requested under subsection 12(1) or that a file should be included in a personal information bank designated as an exempt bank under section 18 shall be on the government institution concerned.

Legislative History: 1980-81-82-83, c. 111, Sch. II “47”.

## SECTION 48

### Order of Court where no authorization to refuse disclosure found

**48.** Where the head of a government institution refuses to disclose personal information requested under subsection 12(1) on the basis of a provision of this Act not referred to in section 49, the Court shall, if it determines that the head of the institution is not authorized under this Act to refuse to disclose the personal information, order the head of the institution to disclose the personal information, subject to such conditions as the Court deems appropriate, to the individual who requested access thereto, or shall make such other order as the Court deems appropriate.

Legislative History: 1980-81-82-83, c. 111, Sch. II “48”.

---

## JURISPRUDENCE

### Court’s powers under section 48

The applicant sought a review, under s. 41 of the *PA*, of the respondent’s refusal to disclose certain personal information about him. The notice of refusal relied on subs. 22(2) of the *PA*. However, at the time of the application for judicial review, reliance was placed instead on other exemptions.

Pursuant to s. 48, the Court had the discretion to either order the information disclosed in its original form, order it disclosed subject to such conditions as it deemed appropriate or make such other order as the Court deemed appropriate.

The Court held that the respondent could not rely on exemptions which had not been identified in the notice of refusal. While the Court did not permit the respondent to rely on other exemptions (such as the para. 22(1)(b) protection afforded to informants), it nevertheless ordered that the information be disclosed, subject to such deletions to ensure that the identity of informants not be revealed.

*Davidson v. Canada (Solicitor General)*, [1987] 3 F.C. 15 (T.D.); aff’d [1989] 2 F.C. 341 (C.A.).

The Court rejected the government institution's contention that the powers under ss. 48 and 49 to "make such order as the Court deems appropriate" enables the Court, following a substitution of grounds before it, to send the matter back to the Information Commissioner for investigation. The Court's power under s. 41 is premised on a complaint to and an investigation by the Commissioner. Such an interpretation by the government institution was not contemplated by Parliament.

The head of the institution was bound by the grounds originally stated in the notice of refusal, with no possibility of subsequent amendment.

*Davidson v. Canada (Solicitor General)*, [1989] 2 F.C. 341 (C.A.).

### **Role of Court / Mandatory and discretionary exemptions**

In the case of mandatory exemptions, the Court ruled that it may look at the Act and the material exempted and determine whether as a matter of law that material comes within the description of material which the Act requires.

In the case of discretionary exemptions, the Court determined that two decisions must be made by the head of the government institution: first, a factual determination as to whether the material comes within the description of material potentially subject to being withheld from disclosure and second, a discretionary decision as to whether that material should nevertheless be disclosed.

The Court held that with respect to the first decision, it could substitute its own conclusion. With respect to the second decision, however, the Court decided that because it is purely discretionary, it 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.

*Kelly v. Canada (Solicitor General)* (1992), 53 F.T.R. 147 (F.C.T.D.); *aff'd* (1993), 154 N.R. 319 (F.C.A.).

Unless a ground for questioning the exercise of discretion is raised by the applicant, the Court relies upon the head of the institution or his delegate in meeting the public duty to exercise discretion properly. Absent an exercise of discretion that appears on its face perverse, or a ground raised by the applicant, the Court assumes the exercise of discretion is proper. To do otherwise, by placing on the respondents an initial burden to demonstrate proper exercise in every case, would result in an unmanageable process and would be inappropriate in this, as in any other, form of judicial review.

*Ruby v. Canada (Royal Canadian Mounted Police)*, [1998] 2 F.C. 351 (T.D.).

**To note:** This case is under appeal.

**See also:** PA ss. 8, 16, 18, 19, 22, 26, 46, 49, 52.

### **No recourse to prerogative writs**

The special procedure provided under s. 41 of the PA for seeking a review of a refusal to give access to personal information does not contemplate the use of prerogative writs or remedies in the nature of prerogative writs.

*Kelly v. Canada (Solicitor General)*, T-948-91, decision dated April 1, 1992, F.C.T.D., not reported.



## No remedy for improper disclosure

The applicant moved for a review of the respondents' decision to release documents on the basis that they were improperly disclosed. The applicant submitted that the documents were made public as part of a trial brief but that he himself was denied access to his personal information under the *PA*. The jurisdiction of the Federal Court under s. 41 is restricted to refusals to disclose documents. In addition the remedies under ss. 48 and 49 of the *PA* are only for refusals to give access.

*Chandran v. Canada (Minister of Employment and Immigration)* (1995), 91 F.T.R. 90 (F.C.T.D.).

**See also:** *PA* ss. 8, 41, 49.

## Standard of intervention by Court

Section 48 refusals allow the Court to intervene where it finds that “the head of the government institution is not authorized to refuse to disclose the personal information”. For s. 49 refusals, the Court may intervene only where “it determines that the head of the institution did not have reasonable grounds on which to refuse to disclose the personal information” requested. The s. 49 standard for intervention by the Court is more stringent.

*Ruby v. Canada (Royal Canadian Mounted Police)*, [1998] 2 F.C. 351 (T.D.).

**To note:** This case is under appeal.

**See also:** *PA* ss. 8, 16, 18, 19, 22, 26, 46, 48, 52.

**See also annotations under s. 49 ATIA.**

# SECTION 49

Order of Court where reasonable grounds of injury not found

**49.** Where the head of a government institution refuses to disclose personal information requested under subsection 12(1) on the basis of section 20 or 21 or paragraph 22(1)(b) or (c) or 24(a), the Court shall, if it determines that the head of the institution did not have reasonable grounds on which to refuse to disclose the personal information, order the head of the institution to disclose the personal information, subject to such conditions as the Court deems appropriate, to the individual who requested access thereto, or shall make such other order as the Court deems appropriate.

Legislative History: 1980-81-82-83, c. 111, Sch. II “49”.

---

## JURISPRUDENCE

### Standard of proof

The standard of proof required by s. 49 precludes the Court's intervention unless it determines that the head of the institution did not have reasonable grounds on which to refuse to disclose the personal information.

*Ternette v. Canada (Solicitor General)*, [1992] 2 F.C. 75 (T.D.).

**See also:** *PA* s. 51(2).



## Role of Court

The role of the Court is to assess on review, in accordance with s. 49 *PA*, whether the respondent did not have reasonable grounds to refuse to release the information still withheld at the time of the hearing.

*Ternette v. Canada (Solicitor General)*, [1992] 2 F.C. 75 (T.D.).

**See also:** *PA* ss. 24, 51, 51(2).

## Absence of negative findings

In the absence of negative findings as required by s. 49, it is implicit that the Court find the respondent had reasonable grounds for refusing to disclose the requested information.

*Ternette v. Canada (Solicitor General)*, [1992] 2 F.C. 75 (T.D.).

## No remedy for improper disclosure

The applicant moved for a review of the respondents' decision to release documents on the basis that they were improperly disclosed. The applicant submitted that the documents were made public as part of a trial brief but that he himself was denied access to his personal information under the *PA*. The jurisdiction of the Federal Court under s. 41 is restricted to refusals to disclose documents. In addition the remedies under ss. 48 and 49 of the *PA* are only for refusals to give access.

*Chandran v. Canada (Minister of Employment and Immigration)* (1995), 91 F.T.R. 90 (F.C.T.D.).

**See also:** *PA* ss. 8, 41, 48.

## Role of Court where discretionary exemptions at issue

Unless a ground for questioning the exercise of discretion is raised by the applicant, the Court relies upon the head of the institution or his delegate in meeting the public duty to exercise discretion properly. Absent an exercise of discretion that appears on its face perverse, or a ground raised by the applicant, the Court assumes the exercise of discretion is proper. To do otherwise, by placing on the respondents an initial burden to demonstrate proper exercise in every case, would result in an unmanageable process and would be inappropriate in this, as in any other, form of judicial review.

*Ruby v. Canada (Royal Canadian Mounted Police)*, [1998] 2 F.C. 351 (T.D.).

**To note:** This case is under appeal.

**See also:** *PA* ss. 8, 16, 18, 19, 22, 26, 46, 47, 48, 52.

## Standard of intervention by Court

For s. 49 refusals, the Court may intervene only where "it determines that the head of the institution did not have reasonable grounds on which to refuse to disclose the personal information" requested. Section 48 refusals allow the Court to intervene where it finds that "the head of the government institution is not authorized to refuse to disclose the personal information". The s. 49 standard for intervention by the Court is more stringent.

*Ruby v. Canada (Royal Canadian Mounted Police)*, [1998] 2 F.C. 351 (T.D.).

**To note:** This case is under appeal.

See also: PA ss. 8, 16, 18, 19, 22, 26, 46, 47, 48, 52.

See also annotations under s. 50 ATIA.

## SECTION 50

Order to remove file from exempt bank

**50.** Where the Privacy Commissioner makes an application to the Court under section 43 for a review of a file contained in a personal information bank designated as an exempt bank under section 18, the Court shall, if it determines

(a) in the case of a file contained in the bank on the basis of personal information described in paragraph 22(1)(a) or subsection 22(2), that the file should not be included therein, or

(b) in the case of a file contained in the bank on the basis of personal information described in section 21 or paragraph 22(1)(b) or (c), that reasonable grounds do not exist on which to include the file in the bank,

order the head of the government institution that has control of the bank to remove the file from the bank or make such other order as the Court deems appropriate.

Legislative History: 1980-81-82-83, c. 111, Sch. II “50”; 1984, c. 40, s. 60.

## SECTION 51

Actions relating to international affairs and defence

**51.** (1) Any application under section 41 or 42 relating to personal information that the head of a government institution has refused to disclose by reason of paragraph 19(1)(a) or (b) or section 21, and any application under section 43 in respect of a file contained in a personal information bank designated as an exempt bank under section 18 to contain files all of which consist predominantly of personal information described in section 21, shall be heard and determined by the Associate Chief Justice of the Federal Court or by such other judge of the Court as the Associate Chief Justice may designate to hear the applications.

Special rules for hearings

(2) An application referred to in subsection (1) or an appeal brought in respect of such application shall

(a) be heard *in camera*; and

(b) on the request of the head of the government institution concerned, be heard and determined in the National Capital Region described in the schedule to the *National Capital Act*.

*Ex parte* representations

(3) During the hearing of an application referred to in subsection (1) or an appeal brought in respect of such application, the head of the government institution concerned shall, on the request of the head of the institution, be given the opportunity to make representations *ex parte*.

Legislative History: 1980-81-82-83, c. 111, Sch. II “51”.

---

## JURISPRUDENCE

### Hearings

These cases offer practical illustrations of the Court's use of the procedural rules allowing *in camera* and *ex parte* hearings.

*Zanganeh v. Canada (Canadian Security Intelligence Service)*, [1989] 1 F.C. 244 (T.D.); *Russell v. Canada (Canadian Security Intelligence Service)* (1990), 31 C.P.R. (3d) 184; 35 F.T.R. 315 (F.C.T.D.).

Although Crown counsel was permitted to make representations *ex parte*, counsel for the applicant was invited to suggest specific questions which the Court could put to the deponents during the *ex parte* proceedings.

*Reyes v. Canada (Secretary of State)* (1984), 9 Admin. L.R. 296 (F.C.T.D.).

**See also:** PA ss. 2, 22.

### Grounds for *in camera* or *ex parte* hearing

The Court's proceedings should be open and public unless there is a particular ground warranting exceptional proceedings *in camera* or *ex parte*. Such a ground exists under subss. 51(2) and (3). This provision is intended to protect public and private interests in information. It would be contrary to the tradition of our judicial system and the *Federal Court Rules* for the Court *ex proprio motu* to direct that the hearing take place entirely *in camera* if that is not necessary for the protection of those interests.

*Ternette v. Canada (Solicitor General)*, [1992] 2 F.C. 75 (T.D.).

**See also:** PA ss. 8, 21, 49, 51(2).

### Subsection 51(2)

#### Criteria for *in camera ex parte* review

The following criteria were kept in mind during the *in camera ex parte* review of the documents not released to the applicant: (1) reference in s. 21 to "subversive or hostile activities" is not limited to the definition thereof in subs. 15(2) of the *ATIA*, but incorporates by reference subs. 15(1) which amplifies the meaning in subs. 15(2); (2) the injuries of concern were those at the time of the application for access; (3) the test for injury should be applied in terms specified in the Treasury Board Guidelines issued to government institutions for dealing with *PA* applications; (4) concern as to the confidentiality of a source may not be warranted where that source did not expect that his identity would not be revealed; (5) concern as to the confidentiality of technical sources of information should perhaps not extend to standard technical measures; (6) mere passage of time does not provide a standard to measure potential injury to the interests of CSIS; (7) severance and release of information not claimed as exempt is appropriate; (8) it is not the Court's function to review the decision-making process of CSIS; (9) concern for potential injury to CSIS's international links; (10) concern for potentially wider injury than might be perceived by considering an isolated piece of information without awareness of how that could be fitted with other information to provide a mosaic of significance to those seeking intelligence related to CSIS operations; and (11) passage of time does not necessarily diminish the reasonable expectation of injury from release of information.

*Ternette v. Canada (Solicitor General)*, [1992] 2 F.C. 75 (T.D.).

**See also:** *PA* ss. 21, 49, 51, 51(2).

### ***In camera* and *ex parte* hearings not infringing *Charter***

Although para. 51(2)(a) and subs. 51(3) of the *Privacy Act* contravene the *Canadian Charter of Rights and Freedoms*, those provisions are saved by s. 1 of the *Charter*.

*Ruby v. Canada (Solicitor General)* (1994), 80 F.T.R. 81 (F.C.T.D.). *Ruby v. Canada (Solicitor General)*, [1996] 3 F.C. 134 (T.D.).

**See also annotations under s. 52 ATIA.**

## SECTION 52

### Costs

**52.** (1) Subject to subsection (2), the costs of and incidental to all proceedings in the Court under this Act shall be in the discretion of the Court and shall follow the event unless the Court orders otherwise.

### Idem

(2) Where the Court is of the opinion that an application for review under section 41 or 42 has raised an important new principle in relation to this Act, the Court shall order that costs be awarded to the applicant even if the applicant has not been successful in the result.

Legislative History: 1980-81-82-83, c. 111, Sch. II “52”.

---

## JURISPRUDENCE

### **Costs--generally**

The denial of counsel fees to a lawyer who represented himself is not contrary to s. 15 of the *Canadian Charter of Rights and Freedoms*.

*Davidson v. Canada (Solicitor General)*, [1989] 2 F.C. 341 (C.A.).

**See also:** *PA* ss. 16, 22, 45; *ATIA* s. 2.

**To note:** Compare with *Ruby v. Canada (Royal Canadian Mounted Police)*, [1998] 2 F.C. 351 (T.D.).

An unsuccessful applicant was awarded costs where his efforts motivated the respondent to make its policies and practices more responsive to requests and more reflective of the spirit of the Act.

*Shepherd v. Canada (Solicitor General)* (1990), 36 F.T.R. 222 (F.C.T.D.).

**See also:** *PA* ss. 13, 17.

Where a self-represented applicant’s motion for declaratory relief was improperly brought, there was no adjudication as to costs.

*Russell v. Canada (Canadian Security Intelligence Service)* (1990), 31 C.P.R. (3d) 184; 35 F.T.R. 315 (F.C.T.D.).

The applicant, a barrister and solicitor, was entitled to recover costs consisting of disbursements and fees paid or payable to counsel representing him. The situation herein was distinguished from the one in *Davidson v. Canada (Solicitor General)* where the lawyer was acting for himself and thus was awarded limited disbursements.

*Ruby v. Canada (Royal Canadian Mounted Police)*, [1998] 2 F.C. 351 (T.D.).

**To note:** This case is under appeal.

**See also:** *PA* ss. 8, 16, 18, 19, 22, 26, 46, 47, 48, 49.

### **Costs awarded where important new principle established**

An unsuccessful applicant was awarded costs where the Court articulated an important and apparently new principle in relation to the interpretation of the Act.

*Zanganeh v. Canada (Canadian Security Intelligence Service)*, [1989] 1 F.C. 244 (T.D.).

**See also:** *PA* ss. 16, 46, 51.

The applicant was awarded costs even though unsuccessful. This was one of the early applications under the *PA* and involved the sensitive task of balancing the right of the individual to know what information about himself is maintained by the Government and the public interests of Canada in the security of the state. This application provided an important opportunity for both the Privacy Commissioner and CSIS to refine their respective approaches to the individual's rights under the *PA*.

*Ternette v. Canada (Solicitor General)*, [1992] 2 F.C. 75 (T.D.).

**See also:** *PA* ss. 21, 49, 51(2).

The issue of the constitutionality of s. 51 and the issue of whether a standard practice of refusing to disclose whether personal information exists in a bank (other than a s. 18 exempt bank) is consistent with subs. 16(2) raised important new principles which justified the applicant's entitlement to costs.

*Ruby v. Canada (Royal Canadian Mounted Police)*, [1998] 2 F.C. 351 (T.D.).

**To note:** This case is under appeal.

**See also:** *PA* ss. 8, 16, 18, 19, 22, 26, 46, 47, 48, 49.

### **Section not to be engaged until the final result**

Even if a new principle is raised in relation to the Act, it was not clear at the time that the principle was important. The wording of subs. 52(2) clearly suggests that the section is not to be engaged until the final result is known.

*Ruby v. Canada (Solicitor General)*, T-639-91, decision dated February 10, 1995, F.C.T.D., not reported.

**See also annotations under s. 53 ATIA.**

## SECTION 53

### Privacy Commissioner

**53.** (1) The Governor in Council shall, by commission under the Great Seal, appoint a Privacy Commissioner after approval of the appointment by resolution of the Senate and House of Commons.

### Tenure of office and removal

(2) Subject to this section, the Privacy Commissioner holds office during good behaviour for a term of seven years, but may be removed by the Governor in Council at any time on address of the Senate and House of Commons.

### Further terms

(3) The Privacy Commissioner, on the expiration of a first or any subsequent term of office, is eligible to be re-appointed for a further term not exceeding seven years.

### Absence or incapacity

(4) In the event of the absence or incapacity of the Privacy Commissioner, or if the office of Privacy Commissioner is vacant, the Governor in Council may appoint another qualified person to hold office instead of the Commissioner for a term not exceeding six months, and that person shall, while holding that office, have all of the powers, duties and functions of the Privacy Commissioner under this Act or any other Act of Parliament and be paid such salary or other remuneration and expenses as may be fixed by the Governor in Council.

Legislative History: 1980-81-82-83, c. 111, Sch. II “53”.

## SECTION 54

### Rank, powers and duties generally

**54.** (1) The Privacy Commissioner shall rank as and have all the powers of a deputy head of a department, shall engage exclusively in the duties of the office of Privacy Commissioner under this Act or any other Act of Parliament and shall not hold any other office under Her Majesty for reward or engage in any other employment for reward.

### Salary and expenses

(2) The Privacy Commissioner shall be paid a salary equal to the salary of a judge of the Federal Court, other than the Chief Justice or the Associate Chief Justice of that Court, and is entitled to be paid reasonable travel and living expenses incurred in the performance of duties under this Act or any other Act of Parliament.

### Pension benefits

(2) The provisions of the *Public Service Superannuation Act*, other than those relating to tenure of office, apply to the Privacy Commissioner, except that a person appointed as Privacy Commissioner from outside the Public Service, as defined in the *Public Service Superannuation Act*, may, by notice in writing given to the President of the Treasury Board not more than sixty days after the date of appointment, elect to participate in the pension plan provided in the *Diplomatic Service (Special) Superannuation Act*, in which case the provisions of that Act, other than those relating to tenure of office, apply to the Privacy Commissioner from the date of appointment and the provisions of the *Public Service Superannuation Act* do not apply.

#### Other benefits

(4) The Privacy Commissioner is deemed to be employed in the public service of Canada for the purposes of the *Government Employees Compensation Act* and any regulations made under section 9 of the *Aeronautics Act*.

Legislative History: 1980-81-82-83, c. 111, Sch. II “54”.

## SECTION 55

#### Information Commissioner may be appointed as Privacy Commissioner

**55.** (1) The Governor in Council may appoint as Privacy Commissioner under section 53 the Information Commissioner appointed under the *Access to Information Act*.

#### Salary

(2) In the event that the Information Commissioner is appointed in accordance with subsection (1) as Privacy Commissioner, the Privacy Commissioner shall, notwithstanding subsection 54(2), be paid the salary of the Information Commissioner but not the salary of the Privacy Commissioner.

Legislative History: 1980-81-82-83, c.111, Sch. II “55”.

## SECTION 56

#### Appointment of Assistant Privacy Commissioner

**56.** (1) The Governor in Council may, on the recommendation of the Privacy Commissioner, appoint one or more Assistant Privacy Commissioners.

#### Tenure of office and removal of Assistant Privacy Commissioner

(2) Subject to this section, an Assistant Privacy Commissioner holds office during good behaviour for a term not exceeding five years.

#### Further terms

(3) An Assistant Privacy Commissioner, on the expiration of a first or any subsequent term of office, is eligible to be re-appointed for a further term not exceeding five years.

Legislative History: 1980-81-82-83, c. 111, Sch. II “56”; 1984, c. 40, s. 79.

## SECTION 57

#### Duties generally

**57.** (1) An Assistant Privacy Commissioner shall engage exclusively in such duties or functions of the office of the Privacy Commissioner under this Act or any other Act of Parliament as are delegated by the Privacy Commissioner to that Assistant Privacy Commissioner and shall not hold any other office under Her Majesty for reward or engage in any other employment for reward.

#### Salary and expenses

(2) An Assistant Privacy Commissioner is entitled to be paid a salary to be fixed by the Governor in Council and such travel and living expenses incurred in the performance of duties

under this Act or any other Act of Parliament as the Privacy Commissioner considers reasonable.

#### Pension benefits

(3) The provisions of the *Public Service Superannuation Act*, other than those relating to tenure of office, apply to an Assistant Privacy Commissioner.

#### Other benefits

(4) An Assistant Privacy Commissioner is deemed to be employed in the public service of Canada for the purposes of the *Government Employees Compensation Act* and any regulations made under section 9 of the *Aeronautics Act*.

Legislative History: 1980-81-82-83, c. 111, Sch. II “57”.

## SECTION 58

#### Staff of the Privacy Commissioner

**58.** (1) Such officers and employees as are necessary to enable the Privacy Commissioner to perform the duties and functions of the Commissioner under this Act or any other Act of Parliament shall be appointed in accordance with the *Public Service Employment Act*.

#### Technical assistance

(2) The Privacy Commissioner may engage on a temporary basis the services of persons having technical or specialized knowledge of any matter relating to the work of the Commissioner to advise and assist the Commissioner in the performance of the duties and functions of the Commissioner under this Act or any other Act of Parliament and, with the approval of the Treasury Board, may fix and pay the remuneration and expenses of such persons.

Legislative History: 1980-81-82-83, c.111, Sch. II “58”.

## SECTION 59

#### Delegation by Privacy Commissioner

**59.** (1) Subject to subsection (2), the Privacy Commissioner may authorize any person to exercise or perform, subject to such restrictions or limitations as the Commissioner may specify, any of the powers, duties or functions of the Commissioner under this Act except

(a) in any case other than a delegation to an Assistant Privacy Commissioner, the power to delegate under this section; and

(b) in any case, the powers, duties or functions set out in sections 38 and 39.

#### Delegations of investigations relating to international affairs and defence

(2) The Privacy Commissioner may not, nor may an Assistant Privacy Commissioner, delegate

(a) the investigation of any complaint resulting from a refusal by the head of a government institution to disclose personal information by reason of paragraph 19(1)(a) or (b) or section 21, or



(b) the investigation under section 36 of files contained in a personal information bank designated under section 18 as an exempt bank on the basis of personal information described in section 21

except to one of a maximum of four officers or employees of the Commissioner specifically designated by the Commissioner for the purpose of conducting those investigations.

#### Delegation by Assistant Privacy Commissioner

(3) An Assistant Privacy Commissioner may authorize any person to exercise or perform, subject to such restrictions or limitations as the Assistant Privacy Commissioner may specify, any of the powers, duties or functions of the Privacy Commissioner under this Act that the Assistant Privacy Commissioner is authorized by the Privacy Commissioner to exercise or perform.

Legislative History: 1980-81-82-83, c. 111, Sch. II “59”.

## SECTION 60

#### Special studies

**60.** (1) The Privacy Commissioner shall carry out or cause to be carried out such studies as may be referred to the Commissioner by the Minister of Justice

(a) relating to the privacy of individuals,

(b) concerning the extension of the rights to which individuals are entitled under this Act in respect of personal information about themselves, and

(c) relating to the collection, retention, disposal, use or disclosure of personal information by persons or bodies, other than government institutions, that come within the legislative authority of Parliament,

and the Privacy Commissioner shall report thereon to the Minister of Justice from time to time.

#### Reports to be tabled

(2) The Minister of Justice shall cause each report by the Privacy Commissioner under subsection (1) to be laid before Parliament on any of the first fifteen days after receipt thereof that either House of Parliament is sitting.

Legislative History: 1980-81-82-83, c. 111, Sch. II “60”.

## SECTION 61

#### Principal office

**61.** The principal office of the Privacy Commissioner shall be in the National Capital Region described in the schedule to the *National Capital Act*.

Legislative History: 1980-81-82-83, c. 111, Sch. II “61”.

## SECTION 62

#### Security requirements

**62.** The Privacy Commissioner and every person acting on behalf or under the direction of the Commissioner who receives or obtains information relating to any investigation under this

Act or any other Act of Parliament shall, with respect to access to and the use of that information, satisfy any security requirements applicable to, and take any oath of secrecy required to be taken by, persons who normally have access to and use of that information.

Legislative History: 1980-81-82-83, c. 111, Sch. II “62”.

## SECTION 63

### Confidentiality

**63.** Subject to this Act, the Privacy Commissioner and every person acting on behalf or under the direction of the Commissioner shall not disclose any information that comes to their knowledge in the performance of their duties and functions under this Act.

Legislative History: 1980-81-82-83, c. 111, Sch. II “63”.

## SECTION 64

### Disclosure authorized

**64.** (1) The Privacy Commissioner may disclose or may authorize any person acting on behalf or under the direction of the Commissioner to disclose information

(a) that, in the opinion of the Commissioner, is necessary to

(i) carry out an investigation under this Act, or

(ii) establish the grounds for findings and recommendations contained in any report under this Act; or

(b) in the course of a prosecution for an offence under this Act, a prosecution for an offence under section 131 of the *Criminal Code* (perjury) in respect of a statement made under this Act, a review before the Court under this Act or an appeal therefrom.

### Disclosure of offence authorized

(2) The Privacy Commissioner may disclose to the Attorney General of Canada information relating to the commission of an offence against any law of Canada or a province on the part of any officer or employee of a government institution if in the opinion of the Commissioner there is evidence thereof.

Legislative History: R.S., 1985, c. P-21, s. 64; R.S., 1985, c. 27 (1st Supp.), s. 187.

## SECTION 65

### Information not to be disclosed

**65.** In carrying out an investigation under this Act, in notifying an individual of a disclosure under subsection 8(5) and in any report made to Parliament under section 38 or 39, the Privacy Commissioner and every person acting on behalf or under the direction of the Privacy Commissioner shall take every reasonable precaution to avoid the disclosure of, and shall not disclose,

(a) any information that the head of a government institution would be authorized to refuse to disclose if it were requested under subsection 12(1) or contained in a record requested under the *Access to Information Act*; or

(b) any information as to whether personal information exists where the head of a government institution, in refusing to disclose the personal information under this Act, does not indicate whether it exists.

Legislative History: 1980-81-82-83, c. 111, Sch. II “65”.

## SECTION 66

### No summons

**66.** The Privacy Commissioner or any person acting on behalf or under the direction of the Commissioner is not a competent or compellable witness, in respect of any matter coming to the knowledge of the Commissioner or that person as a result of performing any duties or functions under this Act during an investigation, in any proceeding other than a prosecution for an offence under this Act, a prosecution for an offence under section 131 of the *Criminal Code* (perjury) in respect of a statement made under this Act, a review before the Court under this Act or an appeal therefrom.

Legislative History: R.S., 1985, c. P-21, s. 66; R.S., 1985, c. 27 (1st Supp.), s. 187.

## SECTION 67

### Protection of Privacy Commissioner

**67.** (1) No criminal or civil proceedings lie against the Privacy Commissioner, or against any person acting on behalf or under the direction of the Commissioner, for anything done, reported or said in good faith in the course of the exercise or performance or purported exercise or performance of any power, duty or function of the Commissioner under this Act.

### Libel or slander

(2) For the purposes of any law relating to libel or slander,

(a) anything said, any information supplied or any document or thing produced in good faith in the course of an investigation carried out by or on behalf of the Privacy Commissioner under this Act is privileged; and

(b) any report made in good faith by the Privacy Commissioner under this Act and any fair and accurate account of the report made in good faith in a newspaper or any other periodical publication or in a broadcast is privileged.

Legislative History: 1980-81-82-83, c. 111, Sch. II “67”.

## SECTION 68

### Obstruction

**68.** (1) No person shall obstruct the Privacy Commissioner or any person acting on behalf or under the direction of the Commissioner in the performance of the Commissioner’s duties and functions under this Act.

### Offence and punishment

(2) Every person who contravenes this section is guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars.

Legislative History: 1980-81-82-83, c. 111, Sch. II “68”.

## SECTION 69

### Act does not apply to certain materials

**69.** (1) This Act does not apply to

- (a) library or museum material preserved solely for public reference or exhibition purposes; or
- (b) material placed in the National Archives of Canada, the National Library, the National Gallery of Canada, the Canadian Museum of Civilization, the Canadian Museum of Nature or the National Museum of Science and Technology by or on behalf of persons or organizations other than government institutions.

### Sections 7 and 8 do not apply to certain information

(2) Sections 7 and 8 do not apply to personal information that is publicly available.

Legislative History: R.S., 1985, c. P-21, s. 69; R.S., 1985, c. 1 (3rd Supp.), s. 12; 1990, c. 3, s. 32; 1992, c. 1, s. 143(E).

## SECTION 70

### Confidences of the Queen's Privy Council for Canada

**70.** (1) This Act does not apply to confidences of the Queen's Privy Council for Canada, including, without restricting the generality of the foregoing, any information contained in

- (a) memoranda the purpose of which is to present proposals or recommendations to Council;
- (b) discussion papers the purpose of which is to present background explanations, analyses of problems or policy options to Council for consideration by Council in making decisions;
- (c) agenda of Council or records recording deliberations or decisions of Council;
- (d) records used for or reflecting communications or discussions between ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;
- (e) records the purpose of which is to brief ministers of the Crown in relation to matters that are before, or are proposed to be brought before, Council or that are the subject of communications or discussions referred to in paragraph (d); and
- (g) draft legislation.

### Definition of "Council"

(2) For the purposes of subsection (1), "Council" means the Queen's Privy Council for Canada, committees of the Queen's Privy Council for Canada, Cabinet and committees of Cabinet.

### Exception

(3) Subsection (1) does not apply to

- (a) confidences of the Queen's Privy Council for Canada that have been in existence for more than twenty years; or
- (b) discussion papers described in paragraph (1)(b)
  - (i) if the decisions to which the discussion papers relate have been made public, or

(ii) where the decisions have not been made public, if four years have passed since the decisions were made.

Legislative History: 1980-81-82-83, c. 111, Sch. II “70”.

## SECTION 71

### Duties and functions of designated Minister

**71. (1)** Subject to subsection (2), the designated Minister shall

- (a) cause to be kept under review the manner in which personal information banks are maintained and managed to ensure compliance with the provisions of this Act and the regulations relating to access by individuals to personal information contained therein;
- (b) assign or cause to be assigned a registration number to each personal information bank;
- (c) prescribe such forms as may be required for the operation of this Act and the regulations;
- (d) cause to be prepared and distributed to government institutions directives and guidelines concerning the operation of this Act and the regulations; and
- (e) prescribe the form of, and what information is to be included in, reports made to Parliament under section 72.

### Exception for Bank of Canada

(2) Anything that is required to be done by the designated Minister under paragraph (1)(a) or (d) shall be done in respect of the Bank of Canada by the Governor of the Bank of Canada.

### Review of existing and proposed personal information banks

(3) Subject to subsection (5), the designated Minister shall cause to be kept under review the utilization of existing personal information banks and proposals for the creation of new banks, and shall make such recommendations as he considers appropriate to the heads of the appropriate government institutions with regard to personal information banks that, in the opinion of the designated Minister, are under-utilized or the existence of which can be terminated.

### Establishment and modification of personal information banks

(4) Subject to subsection (5), no new personal information bank shall be established and no existing personal information banks shall be substantially modified without approval of the designated Minister or otherwise than in accordance with any term or condition on which such approval is given.

### Application of subsections (3) and (4)

(5) Subsections (3) and (4) apply only in respect of personal information banks under the control of government institutions that are departments as defined in section 2 of the *Financial Administration Act*.

### Delegation to head of government institution

(6) The designated Minister may authorize the head of a government institution to exercise and perform, in such manner and subject to such terms and conditions as the designated Minister directs, any of the powers, functions and duties of the designated Minister under subsection (3) or (4).

Legislative History: 1980-81-82-83, c. 111, Sch. II “71”.

## SECTION 72

### Report to Parliament

**72.** (1) The head of every government institution shall prepare for submission to Parliament an annual report on the administration of this Act within the institution during each financial year.

### Tabling of report

(2) Every report prepared under subsection (1) shall be laid before each House of Parliament within three months after the financial year in respect of which it is made or, if that House is not then sitting, on any of the first fifteen days next thereafter that it is sitting.

### Reference to Parliamentary committee

(3) Every report prepared under subsection (1) shall, after it is laid before the Senate and the House of Commons, under subsection (2), be referred to the committee designated or established by Parliament for the purpose of subsection 75(1).

Legislative History: 1980-81-82-83, c. 111, Sch. II “72”.

## SECTION 73

### Delegation by the head of a government institution

**73.** The head of a government institution may, by order, designate one or more officers or employees of that institution to exercise or perform any of the powers, duties or functions of the head of the institution under this Act that are specified in the order.

Legislative History: 1980-81-82-83, c. 111, Sch. II “73”.

## SECTION 74

### Protection from civil proceeding or from prosecution

**74.** Notwithstanding any other Act of Parliament, no civil or criminal proceedings lie against the head of any government institution, or against any person acting on behalf or under the direction of the head of a government institution, and no proceedings lie against the Crown or any government institution, for the disclosure in good faith of any personal information pursuant to this Act, for any consequences that flow from that disclosure, or for the failure to give any notice required under this Act if reasonable care is taken to give the required notice.

Legislative History: 1980-81-82-83, c. 111, Sch. II “74”.

## SECTION 75

### Permanent review of this Act by Parliamentary committee

**75.** (1) The administration of this Act shall be reviewed on a permanent basis by such committee of the House of Commons, of the Senate or of both Houses of Parliament as may be designated or established by Parliament for that purpose.

### Review and report to Parliament

(2) The committee designated or established by Parliament for the purpose of subsection (1) shall, not later than July 1, 1986, undertake a comprehensive review of the provisions and operation of this Act, and shall, within a year after the review is undertaken or within such further time as the House of Commons may authorize, submit a report to Parliament thereon including a statement of any changes the committee would recommend.

Legislative History: 1980-81-82-83, c. 111, Sch. II “75”.

## SECTION 76

### Binding on Crown

**76.** This Act is binding on Her Majesty in right of Canada.

Legislative History: 1980-81-82-83, c.111, Sch. II “76”.

## SECTION 77

### Regulations

**77.** (1) The Governor in Council may make regulations

- (a) specifying government institutions or parts of government institutions for the purpose of paragraph (e) of the definition “personal information” in section 3;
- (b) prescribing the period of time for which any class of personal information is to be retained under subsection 6(1);
- (c) prescribing the circumstances and the manner in which personal information under the control of a government institution is to be disposed of under subsection 6(3);
- (d) specifying investigative bodies for the purposes of paragraphs 8(2)(e) and sections 22 and 23;
- (e) prescribing the circumstances in which and the conditions under which personal information may be disclosed under subsection 8(3);
- (f) prescribing the period of time for which copies of requests received under paragraph 8(2)(e) and records of information disclosed pursuant to the requests are to be retained under subsection 8(4);
- (g) specifying persons or bodies for the purpose of paragraph 8(2)(h);
- (h) prescribing procedures to be followed in making and responding to a request for access to personal information under paragraph 12(1)(a) or (b);
- (i) prescribing procedures to be followed by an individual or a government institution where the individual requests under subsection 12(2) a correction of personal information or a notation of a correction requested, including the period of time within which the correction or notation must be made;
- (j) prescribing any fees, or the manner of calculating any fees, to be paid for being given access to personal information requested under subsection 12(1) or for the making of copies of such personal information;
- (k) prescribing the procedures to be followed by the Privacy Commissioner and any person acting on behalf or under the direction of the Privacy Commissioner in examining or obtaining copies of records relevant to an investigation of a complaint in respect of a refusal to disclose personal information under paragraph 19(1)(a) or (b) or section 21;

- (l) specifying classes of investigations for the purpose of paragraph 22(3)(c);
- (m) prescribing the class of individuals who may act on behalf of minors, incompetents, deceased persons or any other individuals under this Act and regulating the manner in which any rights or actions of individuals under this Act may be exercised or performed on their behalf;
- (n) authorizing the disclosure of information relating to the physical or mental health of individuals to duly qualified medical practitioners or psychologists in order to determine whether disclosure of the information would be contrary to the best interests of the individuals, and prescribing any procedures to be followed or restrictions deemed necessary with regard to the disclosure and examination of the information; and
- (o) prescribing special procedures for giving individuals access under subsection 12(1) to personal information relating to their physical or mental health and regulating the way in which that access is given.

Additions to schedule

(2) The Governor in Council may, by order, amend the schedule by adding thereto any department, ministry of state, body or office of the Government of Canada.

Legislative History: 1980-81-82-83, c. 111, Sch. II “77



## SCHEDULE

*(This Schedule is current as of September 30, 1999. Please note that this administrative consolidation of the Schedule has been prepared for convenience of reference only and has no official sanction.)*

*(Section 3)*

### GOVERNMENT INSTITUTIONS

---

#### Departments and Ministries of State

**Department of Agriculture and Agri-Food**

*Ministère de l'Agriculture et de l'Agroalimentaire*

**Department of Canadian Heritage**

*Ministère du Patrimoine canadien*

**Department of Citizenship and Immigration**

*Ministère de la Citoyenneté et de l'Immigration*

**Department of the Environment**

*Ministère de l'Environnement*

**Department of Finance**

*Ministère des Finances*

**Department of Fisheries and Oceans**

*Ministère des Pêches et des Océans*

**Department of Foreign Affairs and International Trade**

*Ministère des Affaires étrangères et du Commerce international*

**Department of Health**

*Ministère de la Santé*

**Department of Human Resources Development**

*Ministère du Développement des Ressources humaines*

**Department of Indian Affairs and Northern Development**

*Ministère des Affaires indiennes et du Nord canadien*

**Department of Industry**

*Ministère de l'Industrie*

---

---

## SCHEDULE

---

**Department of Justice**

*Ministère de la Justice*

**Department of National Defence (including the Canadian Forces)**

*Ministère de la Défense nationale (y compris les Forces canadiennes)*

**Department of National Revenue (now known as Canada Customs and Revenue Agency, as of November 1<sup>st</sup>, 1999)**

*Ministère du Revenu national (maintenant connu sous le nom de Agence des douanes et du revenu du Canada, depuis le 1<sup>er</sup> novembre 1999)*

**Department of Natural Resources**

*Ministère des Ressources naturelles*

**Department of Public Works and Government Services**

*Ministère des Travaux publics et des Services gouvernementaux*

**Department of the Solicitor General**

*Ministère du Solliciteur général*

**Department of Transport**

*Ministère des Transports*

**Department of Veterans Affairs**

*Ministère des Anciens combattants*

**Department of Western Economic Diversification**

*Ministère de la Diversification de l'économie de l'Ouest canadien*

# SCHEDULE

---

## Other Government Institutions

### Atlantic Canada Opportunities Agency

*Agence de promotion économique du Canada atlantique*

### Atlantic Pilotage Authority

*Administration de pilotage de l'Atlantique*

### Atomic Energy Control Board

*Commission de contrôle de l'énergie atomique*

### Bank of Canada

*Banque du Canada*

### British Columbia Treaty Commission

*Commission des traités de la Colombie-Britannique*

### Business Development Bank of Canada

*Banque de développement du Canada*

### Canada Council

*Conseil des Arts du Canada*

### Canada Deposit Insurance Corporation

*Société d'assurance-dépôts du Canada*

### Canada Employment Insurance Commission

*Commission de l'assurance-emploi du Canada*

### Canada Information Office

*Bureau d'information du Canada*

### Canada Industrial Relations Board

*Conseil canadien des relations industrielles*

### Canada Lands Company Limited

*Société immobilière du Canada limitée*

### Canada Mortgage and Housing Corporation

*Société canadienne d'hypothèques et de logement*

### Canada-Newfoundland Offshore Petroleum Board

*Office Canada — Terre-Neuve des hydrocarbures extracôtiers*

### Canada-Nova Scotia Offshore Petroleum Board

*Office Canada — Nouvelle-Écosse des hydrocarbures extracôtiers*

## SCHEDULE

---

**Canada Ports Corporation**

*Société canadienne des ports*

**Canada Post Corporation**

*Société canadienne des postes*

**Canadian Advisory Council on the Status of Women**

*Conseil consultatif canadien de la situation de la femme*

**Canadian Artists and Producers Professional Relations Tribunal**

*Tribunal canadien des relations professionnelles artistes-producteurs*

**Canadian Centre for Management Development**

*Centre canadien de gestion*

**Canadian Centre for Occupational Health and Safety**

*Centre canadien d'hygiène et de sécurité au travail*

**Canadian Commercial Corporation**

*Corporation commerciale canadienne*

**Canadian Cultural Property Export Review Board**

*Commission canadienne d'examen des exportations de biens culturels*

**Canadian Dairy Commission**

*Commission canadienne du lait*

**Canadian Environmental Assessment Agency**

*Agence canadienne d'évaluation environnementale*

**Canadian Film Development Corporation**

*Société de développement de l'industrie cinématographique canadienne*

**Canadian Food Inspection Agency**

*Agence canadienne d'inspection des aliments*

**Canadian Government Specifications Board**

*Office des normes du gouvernement canadien*

**Canadian Grain Commission**

*Commission canadienne des grains*

**Canadian Human Rights Commission**

*Commission canadienne des droits de la personne*

## SCHEDULE

### Canadian Human Rights Tribunal

*Tribunal canadien des droits de la personne*

### Canadian International Development Agency

*Agence canadienne de développement international*

### Canadian International Trade Tribunal

*Tribunal canadien du commerce extérieur*

### Canadian Museum of Civilization

*Musée canadien des civilisations*

### Canadian Museum of Nature

*Musée canadien de la nature*

### Canadian Polar Commission

*Commission canadienne des affaires polaires*

### Canadian Radio-television and Telecommunications Commission

*Conseil de la radiodiffusion et des télécommunications canadiennes*

### Canadian Security Intelligence Service

*Service canadien du renseignement de sécurité*

### Canadian Space Agency

*Agence spatiale canadienne*

### Canadian Transportation Accident Investigation and Safety Board

*Bureau canadien d'enquête sur les accidents de transport et de la sécurité des transports*

### Canadian Transportation Agency

*Office des transports du Canada*

### Canadian Wheat Board

*Commission canadienne du blé*

### Copyright Board

*Commission du droit d'auteur*

### Correctional Service of Canada

*Service correctionnel du Canada*

### Defence Construction (1951) Limited

*Construction de défense (1951) Limitée*

### Director of Soldier Settlement

*Directeur de l'établissement de soldats*

## SCHEDULE

---

**The Director, The Veterans' Land Act**

*Directeur des terres destinées aux anciens combattants*

**Economic Development Agency of Canada for the Regions of Quebec**

*Agence de développement économique du Canada pour les régions du Québec*

**Energy Supplies Allocation Board**

*Office de répartition des approvisionnements d'énergie*

**Ethics Counsellor**

*Conseiller en éthique*

**Export Development Corporation**

*Société pour l'expansion des exportations*

**Farm Credit Corporation**

*Société du crédit agricole*

**The Federal Bridge Corporation Limited**

*La Société des ponts fédéraux Limitée*

**Federal-Provincial Relations Office**

*Secrétariat des relations fédérales-provinciales*

**Fisheries Prices Support Board**

*Office des prix des produits de la pêche*

**Fraser River Port Authority**

*Administration portuaire du fleuve Fraser*

**Freshwater Fish Marketing Corporation**

*Office de commercialisation du poisson d'eau douce*

**Grain Transportation Agency Administrator**

*Administrateur de l'Office du transport du grain*

**Great Lakes Pilotage Authority**

*Administration de pilotage des Grands Lacs*

**Gwich'in Land and Water Board**

*Office gwich'in des terres et des eaux*

**Gwich'in Land Use Planning Board**

*Office gwich'in d'aménagement territorial*

## SCHEDULE

---

### **Halifax Port Authority**

*Administration portuaire de Halifax*

### **Hazardous Materials Information Review Commission**

*Conseil de contrôle des renseignements relatifs aux matières dangereuses*

### **Historic Sites and Monuments Board of Canada**

*Commission des lieux et monuments historiques du Canada*

### **Immigration and Refugee Board**

*Commission de l'immigration et du statut de réfugié*

### **International Centre for Human Rights and Democratic Development**

*Centre international des droits de la personne et du développement démocratique*

### **International Development Research Centre**

*Centre de recherches pour le développement international*

### **The Jacques-Cartier and Champlain Bridges Inc.**

*Les Ponts Jacques-Cartier et Champlain Inc.*

### **Laurentian Pilotage Authority**

*Administration de pilotage des Laurentides*

### **Law Commission of Canada**

*Commission du droit du Canada*

### **The Leadership Network**

*Le Réseau du leadership*

### **MacKenzie Valley Environmental Impact Review Board**

*Office d'examen des répercussions environnementales de la vallée du MacKenzie*

### **Medical Research Council**

*Conseil de recherches médicales*

### **Merchant Seamen Compensation Board**

*Commission d'indemnisation des marins marchands*

### **Millennium Bureau of Canada**

*Bureau du Canada pour le millénaire*

### **Montreal Port Authority**

*Administration portuaire de Montréal*

## SCHEDULE

---

**National Archives of Canada**

*Archives nationales du Canada*

**National Arts Centre Corporation**

*Corporation du Centre national des Arts*

**The National Battlefields Commission**

*Commission des champs de bataille nationaux*

**National Capital Commission**

*Commission de la capitale nationale*

**National Energy Board**

*Office national de l'énergie*

**National Farm Products Council**

*Conseil national des produits agricoles*

**National Film Board**

*Office national du film*

**National Gallery of Canada**

*Musée des beaux-arts du Canada*

**National Library**

*Bibliothèque nationale*

**National Museum of Science and Technology**

*Musée national des sciences et de la technologie*

**National Parole Board**

*Commission nationale des libérations conditionnelles*

**National Research Council of Canada**

*Conseil national de recherches du Canada*

**National Round Table on the Environment and the Economy**

*Table ronde nationale sur l'environnement et l'économie*

**Natural Sciences and Engineering Research Council**

*Conseil de recherches en sciences naturelles et en génie*



**Northern Pipeline Agency**

*Administration du pipe-line du Nord*

---

## **SCHEDULE**

---

**Northwest Territories Water Board**

*Office des eaux des Territoires du Nord-Ouest*

**Office of Privatization and Regulatory Affairs**

*Bureau de privatisation et des affaires réglementaires*

**Office of the Auditor General of Canada**

*Bureau du vérificateur général du Canada*

**Office of the Chief Electoral Officer**

*Bureau du directeur général des élections*

**Office of the Commissioner of Official Languages**

*Commissariat aux langues officielles*

**Office of the Comptroller General**

*Bureau du contrôleur général*

**Office of the Co-ordinator, Status of Women**

*Bureau de la coordonnatrice de la situation de la femme*

**Office of the Correctional Investigator of Canada**

*Bureau de l'enquêteur correctionnel du Canada*

**Office of the Inspector General of the Canadian Security Intelligence Service**

*Bureau de l'inspecteur général du service canadien du renseignement de sécurité*

**Office of the Superintendent of Financial Institutions**

*Bureau du surintendant des institutions financières*

**Pacific Pilotage Authority**

*Administration de pilotage du Pacifique*

**Parks Canada Agency**

*Agence parcs Canada*

**Patented Medicine Prices Review Board**

*Conseil d'examen du prix des médicaments brevetés*

**Pension Appeals Board**

*Commission d'appel des pensions*

**Petroleum Compensation Board**

*Office des indemnisations pétrolières*

---

**SCHEDULE**

---

**Petroleum Monitoring Agency**

*Agence de surveillance du secteur pétrolier*

**Prairie Farm Rehabilitation Administration**

*Administration du rétablissement agricole des Prairies*

**Prince Rupert Port Authority**

*Comité externe d'examen de la Gendarmerie royale du Canada*

**Privy Council Office**

*Bureau du Conseil privé*

**Public Service Commission**

*Commission de la fonction publique*

**Public Service Staff Relations Board**

*Commission des relations de travail dans la fonction publique*

**Quebec Port Authority**

*Administration portuaire de Québec*

**Regional Development Incentives Board**

*Conseil des subventions au développement régional*

**Royal Canadian Mint**

*Monnaie royale canadienne*

**Royal Canadian Mounted Police**

*Gendarmerie royale du Canada*

**Royal Canadian Mounted Police External Review Committee**

*Comité externe d'examen de la Gendarmerie royale du Canada*

**Royal Canadian Mounted Police Public Complaints Commission**

*Commission des plaintes du public contre la Gendarmerie royale du Canada*

**St. John's Port Authority**

*Administration portuaire de St. John's*

**Saguenay Port Authority**

*Administration portuaire du Saguenay*

**Sahtu Land and Water Board**

*Office des terres et des eaux du Sahtu*

**Sahtu Land Use Planning Board**

*Office d'aménagement Territorial du Sahtu*

---

## **SCHEDULE**

---

**Saint John Port Authority**

*Administration portuaire de Saint-Jean*

**The Seaway International Bridge Corporation, Ltd.**

*La Corporation du Pont international de la voie maritime, Ltée*

**Security Intelligence Review Committee**

*Comité de surveillance des activités de renseignement de sécurité*

**Sept-Îles Port Authority**

*Administration portuaire de Sept-Îles*

**Social Sciences and Humanities Research Council**

*Conseil de recherches en sciences humaines*

**Standards Council of Canada**

*Conseil canadien des normes*

**Statistics Canada**

*Statistique Canada*

**Statute Revision Commission**

*Commission de révision des lois*

**Toronto Port Authority**

*Administration portuaire de Toronto*

**Treasury Board Secretariat**

*Secrétariat du Conseil du Trésor*

**Trois-Rivières Port Authority**

*Administration portuaire de Trois-Rivières*

**Vancouver Port Authority**

*Administration portuaire de Vancouver*

**Veterans Review and Appeal Board**

*Tribunal des anciens combattants (révision et appel)*

**Yukon Surface Rights Board**

*Office des droits de surface du Yukon*

**Yukon Territory Water Board**

*Office des eaux du territoire du Yukon*

---