

Federal Court



Cour fédérale

Date: 20100924

Docket: T-1552-09

Citation: 2010 FC 954

[REVISED ENGLISH TRANSLATION]

Ottawa, Ontario, September 24, 2010

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

**CANADIAN BROADCASTING
CORPORATION**

Applicant

and

**INFORMATION COMMISSIONER
OF CANADA**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under sections 18 and 18.1 of the *Federal Courts Act*, RSC 1985, c F-7. This application is with respect to a dispute between the Canadian Broadcasting Corporation / Société Radio-Canada (the CBC) and the Information Commissioner of Canada / Commissaire à l'information du Canada (the Commissioner). The dispute in question

essentially involves the authority of the Commissioner to order the CBC to produce records under the *Access to Information Act*, RSC 1985, c A-1 (the Act).

[2] In this application for judicial review, the CBC is seeking a declaration that the Commissioner does not have authority to order access to the CBC records, by order or otherwise, on the ground that those records fall under the exclusion set out in section 68.1 of the Act.

Factual Background

[3] The CBC has been subject to the *Access to Information Act* since September 2007, when the legislation was amended. The amendment making the CBC subject to the Act had been discussed and debated by committees and task forces. At the end of that process, the amendment was incorporated in the legislation by section 68.1, which reads as follows:

EXCLUSIONS	EXCLUSIONS
Canadian Broadcasting Corporation	Société Radio-Canada
68.1 This Act does not apply to any information that is under the control of the Canadian Broadcasting Corporation that relates to its journalistic, creative or programming activities, other than information that relates to its general administration.	68.1 La présente loi ne s'applique pas aux renseignements qui relèvent de la Société Radio-Canada et qui se rapportent à ses activités de journalisme, de création ou de programmation, à l'exception des renseignements qui ont trait à son administration.

[4] Subsequently, between December 2007 and June 2009, the CBC received a number of access to information requests. Several of those requests were refused on the ground that they were

considered to be excluded from the Act under section 68.1. In addition, the Court notes that the refusal letter that the CBC sends to a person requesting access indicates that a complaint regarding the refusal may be addressed to the Information Commissioner [Applicant's Record, Tab B: examination of Pierre Nollet, p 52, paras 150-151].

[5] The Information Commissioner received 16 complaints from individuals whose access requests were refused by the CBC. The Commissioner initiated an investigation to deal with the complaints. In the course of her investigation, the Commissioner asked the CBC to disclose a number of records to her.

[6] The Commissioner's request was refused by the CBC on the grounds that the information contained in the records subject to the 16 access requests under investigation are excluded from the Act because, under section 68.1, the records relate to CBC's journalistic, creative or programming activities.

[7] In response to the CBC's refusal, the Commissioner stated that, on the contrary, section 68.1 of the Act gives her authority to examine the records in order to determine whether she may exercise the authority provided by the Act in respect of information relating to the general administration of the CBC. The Commissioner alleges that, in order to determine her authority, the Act provides her with the right to examine all CBC records, including records that, in the opinion of the CBC, contain information relating to its journalistic, creative or programming activities.

Accordingly, the Commissioner is of the view that she has the authority to order the CBC to disclose those records to her for examination.

[8] On September 15, 2009, the Commissioner ordered the CBC to disclose to her copies of the records in respect of which the access requests were made. In the meantime, the CBC brought an application for judicial review seeking a declaration that the Commissioner does not have authority to order disclosure of records excluded under section 68.1 of the Act. In response to that development, the Commissioner agreed to suspend her investigation pending the final decision of this Court.

Issue

[9] The only issue in this application for judicial review is the following : Does the Information Commissioner of Canada have authority to order the CBC to disclose records, including records that, in the opinion of the CBC, relate to its journalistic, creative or programming activities, in order to determine whether those records fall under the exception, and consequently whether they are excluded under section 68.1 of the Act?

Standard of Review

[10] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, the Supreme Court of Canada held that there are two standards of review that may be applied to the decisions of administrative bodies and federal tribunals: correctness and reasonableness. The Supreme Court of

Canada also stated that where there is a question of law or a true jurisdiction question, as in this case, the standard of review must be correctness:

[59] ... It is important here to take a robust view of jurisdiction. We neither wish nor intend to return to the jurisdiction/preliminary question doctrine that plagued the jurisprudence in this area for many years. “Jurisdiction” is intended in the narrow sense of whether or not the tribunal had the authority to make the inquiry. In other words, true jurisdiction questions arise where the tribunal must explicitly determine whether its statutory grant of power gives it the authority to decide a particular matter. The tribunal must interpret the grant of authority correctly or its action will be found to be *ultra vires* or to constitute a wrongful decline of jurisdiction: D. J. M. Brown and J. M. Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf), at pp. 14-3 to 14-6. ...

[11] Because this case raises a true jurisdiction question, the standard of review that applies here is correctness.

Analysis

[12] In order to interpret section 68.1 of the Act and determine the authority of the Commissioner, it is useful at this stage to do a brief overview of certain provisions of the Act.

[13] The general principle by which we must be guided in interpreting the Act is set out in section 2. This section plainly states that the purpose of the Act is to extend the present laws of Canada to provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, subject to limited and specific exceptions and exclusions.

[14] The spirit of the Act is based on the principle of disclosure. Under the Act, non-disclosure of information under the control of government institutions is the exception (see *Canada Post Corp. v Canada (Minister of Public Works)* (C.A.), [1995] 2 FC 110, [1995] FCJ No 241, at para 34).

Where access is refused, the Act establishes a process for review by the Information Commissioner of Canada. In performing her functions, the Commissioner is independent and impartial. She acts as a *de facto* ombudsofficer. In *Rowat v Canada (Information Commissioner)*, [2000] FCJ No 832, 193 FTR 1, at para 28, the Court stated that the Commissioner's function is independent:

[28] With respect to the independence of the Commissioner, no issue is taken with the following observations made in the argument advanced by the Commissioner:

The Commissioner is a neutral and independent ombudsofficer charged with supervising the administration of the *Access to Information Act* and government action in relation thereto and is limited to making recommendations to government institutions or to Parliament regarding the disclosure of government information and the administration of the *Access to Information Act*. [*Access to Information Act*, s.2(1), 30, 37, 38, 39, 55 and 5] ...

[15] In addition, under section 4 of the Act, government institutions must respond to all access requests, unless they can show that the information falls under an exception set out in the Act (see *Rubin v Canada (Minister of Transport)* (C.A.), [1998] 2 FC 430, [1997] FCJ No 1614, at para 19).

[16] It should also be noted that in *Canada (Privacy Commissioner) v Canada (Labour Relations Board)*, [1996] 3 FC 609, [1996] FCJ No 1076, at para 47, the Court recognized that the *Access to Information Act* has quasi-constitutional status:

[47] The broad, purposive approach afforded by this Court to the interpretation of both the Access Act and *Privacy Act* originates in part from this legislation's particular status. Subsection 4(1) of the Access Act provides that the Act applies "notwithstanding any other act of Parliament," lending it a quasi-constitutional status. ...

[17] With respect to the operation of the Act, it provides a two-stage review mechanism by which refusal of an access request by a government institution may be reviewed to ensure that the person requesting access is protected.

[18] It is the role of the Commissioner, who is appointed by Parliament and independent of the government, to conduct the first stage of the review. The Act also provides that once the Commissioner has completed her investigation and her report has been released, the second stage of the review is to be conducted by the Federal Court (sections 40 and 41).

[19] A complainant whose access request has been refused is entitled to an objective and independent investigation and be informed of the Commissioner's findings regarding the results of the investigation. As the Federal Court of Appeal observed in *Canada (Information Commissioner) v Canada (Minister of National Defence)*, [1999] FCJ No 522, 240 NR 244, at para 27:

[27] The investigation the Commissioner must conduct is the cornerstone of the access to information system. It represents an informal method of resolving disputes in which the Commissioner is vested not with the power to make decisions, but instead with the power to make recommendations to the institution involved. The importance of this investigation is reinforced by the fact that it constitutes a condition precedent to the exercise of the power of review, as provided in sections 41 and 42 of the Act.

[20] In this case, the CBC argues the principles of the statutory interpretation, which holds that the words of an Act are to be read harmoniously with the scheme of the Act (see *Montréal (City) v 2952-1366 Québec Inc.*, 2005 SCC 62, [2005] 3 SCR 141, at para 9). The CBC also argues that a contextual analysis of subsection 36(2) and section 68.1 of the Act leads to the conclusion that the Commissioner may not order the CBC to disclose information to her. Subsections 36(1) and 36(2) read as follows:

Powers of Information
Commissioner in carrying out
investigations

Pouvoirs du Commissaire à
l'information pour la tenue des
enquêtes

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

36. (1) Le Commissaire à
l'information a, pour
l'instruction des plaintes
déposées en vertu de la présente
loi, le pouvoir :

(a) to summon and enforce
the appearance of persons
before the Information
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;

a) d'assigner et de
contraindre des témoins à
comparaître devant lui, à
déposer verbalement ou par
écrit sous la foi du serment et
à produire les pièces qu'il
juge indispensables pour
instruire et examiner à fond
les plaintes dont il est saisi,
de la même façon et dans la
même mesure qu'une cour
supérieure d'archives;

(b) to administer oaths;

b) de faire prêter serment;

(c) to receive and accept

c) de recevoir des éléments de

such evidence and other information, whether on oath or by affidavit or otherwise, as the Information Commissioner sees fit, whether or not the evidence or information is or would be admissible in a court of law;

preuve ou des renseignements par déclaration verbale ou écrite sous serment ou par tout autre moyen qu'il estime indiqué, indépendamment de leur admissibilité devant les tribunaux;

(*d*) to enter any premises occupied by any government institution on satisfying any security requirements of the institution relating to the premises;

d) de pénétrer dans les locaux occupés par une institution fédérale, à condition de satisfaire aux normes de sécurité établies par l'institution pour ces locaux;

(*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 Information Commissioner under this Act as the Commissioner sees fit; and

e) de s'entretenir en privé avec toute personne se trouvant dans les locaux visés à l'alinéa *d*) et d'y mener, dans le cadre de la compétence que lui confère la présente loi, les enquêtes qu'il estime nécessaires;

(*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.

f) d'examiner ou de se faire remettre des copies ou des extraits des livres ou autres documents contenant des éléments utiles à l'enquête et trouvés dans les locaux visés à l'alinéa *d*).

Access to records

Accès aux documents

(2) Notwithstanding any other Act of Parliament or any privilege under the law of evidence, the Information Commissioner may, during the investigation of any complaint under this Act, examine any

(2) Nonobstant toute autre loi fédérale et toute immunité reconnue par le droit de la preuve, le Commissaire à l'information a, pour les enquêtes qu'il mène en vertu de la présente loi, accès à tous les

record to which this Act applies that is under the control of a government institution, and no such record may be withheld from the Commissioner on any grounds.

documents qui relèvent d'une institution fédérale et auxquels la présente loi s'applique; aucun de ces documents ne peut, pour quelque motif que ce soit, lui être refusé.

...

[...]

[21] While subsection 36(1) assigns certain powers to the Commissioner, including the power to examine records or to have records disclosed to her, subsection 36(2) gives the Commissioner access to any record that is under the control of a government institution. Counsel for the CBC pointed out, however, that subsection 36(2) includes an important caveat, in that the Commissioner has access to any record “to which this Act applies”. Because section 68.1 defines the records to which the Act does not apply, the CBC contends that the Commissioner does not have authority to compel the CBC to disclose records to her to which the Act does not apply.

[22] The CBC also relies broadly on the historical context, which it describes as crucial, to the extent that it clarifies the intention of Parliament. For example, the CBC refers to the interdepartmental task force created by the Government of Canada in 2000 to review all aspects of the access scheme and recommend improvements. At that time, the CBC argued the possible consequences of making all of its journalistic activities subject to the Act, and in particular its independence from the government. In 2002, in a report tabled in Parliament, the then Commissioner advocated a scheme containing exceptions rather than exclusions, and in 2005 the Commissioner proposed a series of amendments to that effect. Parliament did not incorporate that proposal in Bill C-2, *An Act Providing for Conflict of Interest Rules, Restrictions on Election*

Financing and Measures Respecting Administrative Transparency, Oversight and Accountability. In May and June 2006, the Commissioner opposed the creation of an exclusion scheme for the CBC, fearing that it would prevent independent review by the Commission and the Federal Court. The Act was amended and Parliament included the exclusion in section 68.1 [Applicant's Record, Applicant's Memorandum, at pp 10-18].

[23] Relying on an historical analysis of the enactment of section 68.1 and the objective and the grammatical meaning of the Act, and in particular of subsection 36(2), the CBC submits that the Commissioner does not have authority to order it to disclose records that the CBC believes to be excluded from the Act by section 68.1.

[24] Counsel for the Commissioner argued that the purpose of the Act must be given a broad and liberal interpretation and that the Commissioner must have authority to determine whether the records fall under the exception. To do otherwise would run counter to the objective of the Act and would enable the CBC to circumvent the review mechanisms provided in the Act, even though it has been subject to the Act since 2007.

[25] First, this Court is of the opinion that although parliamentary debates and discussions in committees may assist in interpreting a statute, in that they provide the context that was before Parliament, it is also recognized that they are not conclusive in themselves and the weight assigned to them will be limited (see *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, [1998] SCJ No 2, at para 35; *A.Y.S.A. Amateur Youth Soccer Association v Canada (Revenue Agency)*, 2007 SCC 42,

[2007] 3 SCR 217 at para 12; Pierre-André Côté, *Interprétation des lois*, 4th ed., Montréal, Thémis, 2009, at pp 505-506). Following a review of the discussions that took place in committees, in the circumstances, while the historical context is relevant, it is not conclusive in itself. Second, although the wording of section 68.1 is not, shall we say, a model of clarity, the interpretation proposed by the CBC runs contrary to the purpose of the Act, which calls for it to be interpreted liberally (section 2). This Court therefore cannot agree with the interpretation of section 68.1 advanced by the CBC, for the reasons that follow.

[26] Section 68.1 provides that “[t]his Act does not apply to any information that is under the control of the Canadian Broadcasting Corporation that relates to its journalistic, creative or programming activities”. As noted earlier, the CBC relies on the words “[t]his Act does not apply” in arguing that the Commissioner cannot rely on section 36 to order the CBC to disclose records to her. However, it is important to note that section 68.1 also states “other than information that relates to its general administration”. Information that relates to the general administration of a government institution includes “information that relates to expenses paid by the institution for travel, including lodging and hospitality” (section 3.1 of the Act).

[27] Section 68.1, as worded, contains a double negative, that is, an exception to the exclusion. That exception to the exclusion, which refers to information that relates to the general administration of the CBC, may shed light with respect to the authority of the Commissioner. How can the Commissioner determine whether information relates to the general administration of the CBC, and thus falls under the exception set out in section 68.1, if she does not have authority to

review all the records in question, including records relating to the journalistic, creative or programming activities of the CBC?

[28] The Court notes the CBC's argument that when Parliament created parallel schemes for exceptions (sections 13 to 26 of the Act) and exclusions (sections 68 to 69.1 of the Act), it surely did not intend that the two schemes be subject to the same rules.

[29] However, the Court must observe that the wording of sections 68.1 and 68.2, which were both part of the amendment to the Act, contains an exception to the exclusion. Accordingly, the Court is of the opinion that while section 68.1 is included under the "exclusions" heading in the Act, the wording of that section cannot exempt it from independent review by the Commissioner. When we read section 68.1, we see that the Commissioner must have authority to determine, objectively and independently, whether the records fall under the exception and whether or not they may be properly excluded (see *Canada (Attorney General) v Canada (Information Commissioner)*, 2001 FCA 25, [2001] FCJ No 282, at para 21). The consequence, otherwise, would be to exempt the CBC from the Act, and this would be contrary not only to the object of the Act (section 2) but also to its spirit, since the CBC has been subject to the Act since 2007.

[30] The CBC contends that it is in the best position to conduct this exercise, since it has expertise in this area. Also, since the Act states clearly that it "does not apply", the Commissioner has no authority and no power to investigate in this case. In other words, by this reasoning, the CBC

has full authority to determine whether records in respect of which an access request is made fall under the exception set out in section 68.1. The Court does not share that interpretation.

[31] The position taken by the CBC confers the Crown corporation judge in its own case in respect of access requests it receives. On that point, the evidence in the record is that the CBC has not produced any written directives that would ensure uniformity in the process of handling access requests [Applicant's Record, Tab B, examination of Pierre Nollet, p 22, para 54].

[32] In particular, that approach constructs a parallel scheme alongside the Act. The Court refers to *Davidson v Canada (Solicitor General)*, [1989] 2 FC 341, [1989] FCJ No 105, at para 14, and is of the opinion that not only such an interpretation denies the Commissioner authority, but that it also denies one level of review in respect of a complaint to the person who has requested access:

[14] It is no doubt true, as the appellant argued, that a Federal Court trial judge, on a review of a refusal of access by an institution head which, as here, is upheld by the Commissioner, has adequate powers of review over the decision of the institution head, though it must be said that a judge sitting in Court lacks the investigative staff and flexibility of the Commissioner. More important, if new grounds of exemption were allowed to be introduced before the judge after the completion of the Commissioner's investigation into wholly other grounds, as is the issue in the case at bar, the complainant would be denied entirely the benefit of the Commissioner's procedures. He would thus be cut down from two levels of protection to one. No case could better illustrate than the present one the advantages of a two-stage process, because it was only at the second stage that the fatal flaw in the initial ground was discovered.

[33] Further, there is nothing in the Act or, *a fortiori*, in the debates held in committees from which it can be concluded that in enacting the amendment to the Act, Parliament intended to judicialize the access to information request process by denying the Commissioner authority and creating a two-stream process that would consequently create a direct application to the Federal Court for judicial review.

[34] In addition, the CBC draws a parallel in *Canada (Privacy Commissioner) v Blood Tribe Department of Health*, 2008 SCC 44, [2008] 2 SCR 574, in which the Supreme Court of Canada held that the Privacy Commissioner could not obtain access to information covered by solicitor-client privilege, even if the purpose of access was to ensure that the claim of privilege was justified. At the hearing before this Court, counsel for the CBC asserted an analogy between solicitor-client privilege and journalistic sources. In the case before us, the Court does not accept the argument made by the CBC, since *Blood Tribe* did not involve an exclusion. In addition, the principles stated in *Blood Tribe* relate to cases of information protected by the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, the corollary of which is the opposite of the *Access to Information Act*.

[35] With respect to the role of the Information Commissioner, sections 36 and 37 of the Act list the Commissioner's powers. If we read those sections, it is clear that she has neither decision-making nor coercive power. As the Commissioner pointed out, the result of her investigation gives her the power only to make recommendations to government institutions, and the decision as to whether or not to implement those recommendations is up to the institutions. It is also clear from

subsection 35(1) of the Act that the Commissioner's investigations are private and confidential. It is also important to note that there is therefore no disclosure at that stage (see *Rubin*, para 9). As well, under subsection 36(5) of the Act, government institutions that produce documents may require that the Commissioner return them within 10 days. In other words, the Act was drafted with clearly defined parameters.

[36] The Court finds it difficult to see what harm might be caused to the CBC in the performance of its mission if the Commissioner obtained copies of records in order to ascertain whether they relate to the general administration of the CBC under section 68.1 (see Respondent's Record, Tab B: examination of Pierre Nollet, at pp 94-95). We must keep in mind that the Commissioner is a neutral entity, investigations are private and confidential, and the review must be objective. Disclosing records to the Commissioner does not amount to revealing them. A distinction must be made between sharing information and records with the Commissioner, in response to a complaint in respect of a refusal of access, and revealing that information publicly, in the event that the access request is granted. If there is disagreement between the CBC and the Commissioner once she has reached her conclusions, the CBC may take its disagreement before the Federal Court.

[37] In light of the foregoing, and having regard to the scheme of the Act and the provisions of the Act when read as a whole, the Court finds that the Commissioner has authority under section 68.1 to order the CBC to disclose records, including records that, in the opinion of the CBC, relate to its journalistic, creative or programming activities, in order to determine whether those records fall under the exception and consequently whether they are subject to the exclusion.

[38] For all these reasons, the Court dismisses this application for judicial review.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that this application for judicial review be dismissed.

“Richard Boivin”

Judge

ANNEX

Access to Information Act, R.S. 1985, c. A-1

*Loi sur l'accès à l'information, LRC, 1985,
c. A-1*

PURPOSE OF ACT

OBJET DE LA LOI

Purpose

Objet

2. (1) The purpose of this Act is to extend the present laws of Canada to provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, that necessary exceptions to the right of access should be limited and specific and that decisions on the disclosure of government information should be reviewed independently of government.

2. (1) La présente loi a pour objet d'élargir l'accès aux documents de l'administration fédérale en consacrant le principe du droit du public à leur communication, les exceptions indispensables à ce droit étant précises et limitées et les décisions quant à la communication étant susceptible de recours indépendants du pouvoir exécutif.

Complementary procedures

Étoffement des modalités d'accès

(2) This Act is intended to complement and not replace existing procedures for access to government information and is not intended to limit in any way access to the type of government information that is normally available to the general public.

(2) La présente loi vise à compléter les modalités d'accès aux documents de l'administration fédérale; elle ne vise pas à restreindre l'accès aux renseignements que les institutions fédérales mettent normalement à la disposition du grand public.

For greater certainty

Précision

3.1 For greater certainty, for the purposes of this Act, information that relates to the general administration of a government institution includes information that relates to expenses paid by the institution for travel, including lodging, and hospitality.

3.1 Il est entendu que, pour l'application de la présente loi, les renseignements se rapportant à l'administration de l'institution fédérale comprennent ceux qui ont trait à ses dépenses en matière de déplacements, d'hébergement et d'accueil.

ACCESS TO GOVERNMENT RECORDSACCÈS AUX DOCUMENTS DE
L'ADMINISTRATION FÉDÉRALE

Right to access to records

Droit d'accès

4. (1) Subject to this Act, but notwithstanding any other Act of Parliament, every person who is

4. (1) Sous réserve des autres dispositions de la présente loi mais nonobstant toute autre loi fédérale, ont droit à l'accès aux documents relevant d'une institution fédérale et peuvent se les faire communiquer sur demande :

(a) a Canadian citizen, or

a) les citoyens canadiens;

(b) a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*,

b) les résidents permanents au sens du paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés*.

has a right to and shall, on request, be given access to any record under the control of a government institution.

...

[...]

Responsibility of government institutions

Responsable de l'institution fédérale

(2.1) The head of a government institution shall, without regard to the identity of a person making a request for access to a record under the control of the institution, make every reasonable effort to assist the person in connection with the request, respond to the request accurately and completely and, subject to the regulations, provide timely access to the record in the format requested.

(2.1) Le responsable de l'institution fédérale fait tous les efforts raisonnables, sans égard à l'identité de la personne qui fait ou s'apprête à faire une demande, pour lui prêter toute l'assistance indiquée, donner suite à sa demande de façon précise et complète et, sous réserve des règlements, lui communiquer le document en temps utile sur le support demandé.

...

[...]

COMPLAINTS

PLAINTES

Receipt and investigation of complaints

Réception des plaintes et enquêtes

30. (1) Subject to this Act, the Information Commissioner shall receive and investigate

30. (1) Sous réserve des autres dispositions de la présente loi, le Commissaire à l'information

complaints

(a) from persons who have been refused access to a record requested under this Act or a part thereof;

(b) from persons who have been required to pay an amount under section 11 that they consider unreasonable;

(c) from persons who have requested access to records in respect of which time limits have been extended pursuant to section 9 where they consider the extension unreasonable;

(d) from persons who have not been given access to a record or a part thereof in the official language requested by the person under subsection 12(2), or have not been given access in that language within a period of time that they consider appropriate;

(d.1) from persons who have not been given access to a record or a part thereof in an alternative format pursuant to a request made under subsection 12(3), or have not been given such access within a period of time that they consider appropriate;

(e) in respect of any publication or bulletin referred to in section 5; or

(f) in respect of any other matter relating to requesting or obtaining access to records under this Act.

...

reçoit les plaintes et fait enquête sur les plaintes :

a) déposées par des personnes qui se sont vu refuser la communication totale ou partielle d'un document qu'elles ont demandé en vertu de la présente loi;

b) déposées par des personnes qui considèrent comme excessif le montant réclamé en vertu de section 11;

c) déposées par des personnes qui ont demandé des documents dont les délais de communication ont été prorogés en vertu de section 9 et qui considèrent la prorogation comme abusive;

d) déposées par des personnes qui se sont vu refuser la traduction visée au paragraphe 12(2) ou qui considèrent comme contre-indiqué le délai de communication relatif à la traduction;

d.1) déposées par des personnes qui se sont vu refuser la communication des documents ou des parties en cause sur un support de substitution au titre du paragraphe 12(3) ou qui considèrent comme contre-indiqué le délai de communication relatif au transfert;

e) portant sur le répertoire ou le bulletin visés à section 5;

f) portant sur toute autre question relative à la demande ou à l'obtention de documents en vertu de la présente loi.

[...]

Powers of Information Commissioner in carrying out investigations

36. (1) The Information 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 Information 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 Information 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 Information 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.

Pouvoirs du Commissaire à l'information pour la tenue des enquêtes

36. (1) Le Commissaire à l'information a, pour l'instruction des plaintes déposées en vertu de la présente loi, le pouvoir :

a) d'assigner et de contraindre des témoins à comparaître devant lui, à déposer verbalement ou par écrit sous la foi du serment et à produire les pièces qu'il juge indispensables pour instruire et examiner à fond les plaintes dont il est saisi, de la même façon et dans la même mesure qu'une cour supérieure d'archives;

b) de faire prêter serment;

c) de recevoir des éléments de preuve ou des renseignements par déclaration verbale ou écrite sous serment ou par tout autre moyen qu'il estime indiqué, indépendamment de leur admissibilité devant les tribunaux;

d) de pénétrer dans les locaux occupés par une institution fédérale, à condition de satisfaire aux normes de sécurité établies par l'institution pour ces locaux;

e) de s'entretenir en privé avec toute personne se trouvant dans les locaux visés à l'alinéa d) et d'y mener, dans le cadre de la compétence que lui confère la présente loi, les enquêtes qu'il estime nécessaires;

f) d'examiner ou de se faire remettre des copies ou des extraits des livres ou autres documents contenant des éléments utiles à l'enquête et trouvés dans les locaux visés à l'alinéa d).

Access to records

(2) Notwithstanding any other Act of Parliament or any privilege under the law of evidence, the Information Commissioner may, during the investigation of any complaint under this Act, examine any record to which this Act applies that is under the control of a government institution, and no such record may be withheld from the Commissioner on any grounds.

...

REVIEW BY THE FEDERAL COURT

Review by Federal Court

41. Any person who has been refused access to a record requested under this Act or a part thereof may, if a complaint has been made to the Information 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 Information Commissioner are reported to the complainant under subsection 37(2) or within such further time as the Court may, either before or after the expiration of those forty-five days, fix or allow.

Information Commissioner may apply or appear

42. (1) The Information Commissioner may

(a) apply to the Court, within the time limits prescribed by section 41, for a review of any refusal to disclose a record requested under this Act or a part thereof in respect of which an investigation has been carried out by the

Accès aux documents

(2) Nonobstant toute autre loi fédérale et toute immunité reconnue par le droit de la preuve, le Commissaire à l'information a, pour les enquêtes qu'il mène en vertu de la présente loi, accès à tous les documents qui relèvent d'une institution fédérale et auxquels la présente loi s'applique; aucun de ces documents ne peut, pour quelque motif que ce soit, lui être refusé.

[...]

RÉVISION PAR LA COUR FÉDÉRALE

Révision par la Cour fédérale

41. La personne qui s'est vu refuser communication totale ou partielle d'un document demandé en vertu de la présente loi et qui a déposé ou fait déposer une plainte à ce sujet devant le Commissaire à l'information peut, dans un délai de quarante-cinq jours suivant le compte rendu du Commissaire prévu au paragraphe 37(2), exercer un recours en révision de la décision de refus devant la Cour. La Cour peut, avant ou après l'expiration du délai, le proroger ou en autoriser la prorogation.

Exercice du recours par le Commissaire, etc.

42. (1) Le Commissaire à l'information a qualité pour :

a) exercer lui-même, à l'issue de son enquête et dans les délais prévus à section 41, le recours en révision pour refus de communication totale ou partielle d'un document, avec le consentement de la

Information Commissioner, if the Commissioner has the consent of the person who requested access to the record;

(b) appear before the Court on behalf of any person 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 or 44.

personne qui avait demandé le document;

b) comparaître devant la Cour au nom de la personne qui a exercé un recours devant la Cour en vertu de section 41;

c) comparaître, avec l'autorisation de la Cour, comme partie à une instance engagée en vertu des articles 41 ou 44.

Applicant may appear as party

(2) Where the Information Commissioner makes an application under paragraph (1)(a) for a review of a refusal to disclose a record requested under this Act or a part thereof, the person who requested access to the record may appear as a party to the review.

Comparution de la personne qui a fait la demande

(2) Dans le cas prévu à l'alinéa (1)a), la personne qui a demandé communication du document en cause peut comparaître comme partie à l'instance.

Notice to third parties

43. (1) The head of a government institution who has refused to give access to a record requested under this Act or a part thereof shall forthwith on being given notice of any application made under section 41 or 42 give written notice of the application to any third party that the head of the institution has notified under subsection 27(1) in respect of the request or would have notified under that subsection if the head of the institution had intended to disclose the record or part thereof.

Avis au tiers

43. (1) Sur réception d'un avis de recours en révision exercé en vertu des articles 41 ou 42, le responsable d'une institution fédérale qui avait refusé communication totale ou partielle du document en litige donne à son tour avis du recours au tiers à qui il avait donné l'avis prévu au paragraphe 27(1) ou à qui il l'aurait donné s'il avait eu l'intention de donner communication totale ou partielle du document.

Third party may appear as party

(2) Any third party that has been given notice of an application for a review under subsection (1) may appear as a party to the

Comparution du tiers

(2) Le tiers qui est avisé conformément au paragraphe (1) peut comparaître comme partie à l'instance.

review.

EXCLUSIONS

Canadian Broadcasting Corporation

68.1 This Act does not apply to any information that is under the control of the Canadian Broadcasting Corporation that relates to its journalistic, creative or programming activities, other than information that relates to its general administration.

EXCLUSIONS

Société Radio-Canada

68.1 La présente loi ne s'applique pas aux renseignements qui relèvent de la Société Radio-Canada et qui se rapportent à ses activités de journalisme, de création ou de programmation, à l'exception des renseignements qui ont trait à son administration.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1552-09

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INFORMATION COMMISSIONER OF CANADA

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