

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

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## ORDER PO-4159

Appeal PA18-365

Archives of Ontario

June 24, 2021

**Summary:** An individual submitted a request under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) to the Archives of Ontario (the archives) for access to two files related to a specific prosecution that occurred in 1968. The archives granted full access to the records in one file and partial access to the records in the second file, a prosecution case file, relying on the solicitor-client privilege and personal privacy exemptions in sections 19 and 21(1) of the *Act* to withhold some information from that file. After the decision was appealed to the IPC, the archives issued several revised decisions, disclosing additional records to the appellant, and the appellant also narrowed the scope of the information she sought. In this order, the adjudicator finds that the discretionary exemption in section 19(b) applies to the records remaining at issue because they form part of the Crown brief, and she upholds the archives' exercise of discretion in denying access to them. As a result, it is unnecessary to consider the application of section 21(1) to the records, and she dismisses the appeal.

**Statute Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 19.

**Order Considered:** Order PO-2733.

**Cases Considered:** *Ontario (Attorney General) v. Holly Big Canoe* (2006), 80 O.R. (3d) 761, 2006 CanLII 14965 (Div. Ct.); and *Ontario (Attorney General) v. Ontario (Information and Privacy Commission, Inquiry Officer)* (2002), 62 O.R. (3d) 167, 2002 CanLII 18055 (C.A.).

### OVERVIEW:

[1] This order determines the issues raised by a request for access to information

held by the Archives of Ontario related to the prosecution of an individual for crimes that occurred more than a half century ago.

[2] An individual submitted an access request under the *Freedom of Information and Protection of Privacy Act (FIPPA or the Act)* to the Archives of Ontario (the archives) for records related to a criminal conviction in 1968. Specifically, the requester sought access to two sets of records identified as a Supreme Court Registrar's criminal indictment file and a named county's prosecution case file, both relating to the 1968 case. The requester provided the series numbers for the files, the name of the presiding judge, the name of the accused individual, and the location of the crime.

[3] The archives issued an access decision stating that it had located the 380-page prosecution file and that it was denying access to it under sections 19 (solicitor-client privilege) and 21(1) (personal privacy) of the *Act*. The archives noted that the file included records from the court file, which it took the position are not subject to the *Act*, but it disclosed eight pages outside the *Act*, in accordance with a policy on public access to court files. The archives disclosed the records in the criminal indictment file in their entirety to the requester.

[4] The requester, now the appellant, appealed the archives' decision to deny access to the prosecution file to the Office of the Information and Privacy Commissioner of Ontario (the IPC). The IPC assigned a mediator to explore the possibility of resolving the appeal. During mediation, the archives provided an index of the records to the appellant, along with a revised decision to disclose one record. The appellant subsequently narrowed the scope of her appeal to eight records, one of which the archives disclosed to her in a further revised decision. As the archives maintained its position that sections 19 and 21(1) of the *Act* apply to the remaining records, no further mediation was possible and the appeal moved to the adjudication stage, where an adjudicator may conduct an inquiry.

[5] I decided to conduct an inquiry and started it by sending a Notice of Inquiry to the archives seeking its representations, which I received. I then provided the appellant with a non-confidential copy of the archives' representations and a Notice of Inquiry,<sup>1</sup> which summarized the issues and the archives' position on the exemptions. The appellant provided representations and a signed consent from the individual who was the subject of the 1968 prosecution (the affected party) for my consideration. She also advised that she was further narrowing the scope of her appeal to two records, identified as records 7 and 34, and described by the archives as a compilation of the Crown's case and a named detective sergeant's statement.

[6] I then sought and obtained reply representations from the archives, which I

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<sup>1</sup> The confidential portions of the archives' representations were withheld in accordance with the IPC's *Code of Procedure and Practice Direction 7*.

shared with the appellant, inviting her to submit sur-reply representations on several specific matters. The appellant did not submit sur-reply representations.

[7] In this order, I find that section 19(b) of the *Act* applies to records 7 and 34 because they are part of the Crown brief in relation to the prosecution of the affected party, and I uphold the archives' exercise of discretion in denying access to them. As a result, it is unnecessary to consider whether section 21(1) also applies to the records. I uphold the archives' decision and dismiss the appeal.

## **RECORDS:**

[8] The chart below, excerpted from the index of records prepared by the archives, describes the records remaining at issue in this appeal.

<b>Record #</b>	<b>Page #</b>	<b>Description</b>	<b>Date</b>	<b>Exemption claimed</b>
7	81-273	Regina vs. [redacted] (witnesses in brief, post-mortem, synopsis, exhibits, etc.)	November 12, 1968	Sections 19(b) and 21
34	385-401	Statement from [a named] Detective Sergeant	Undated	Sections 19(b) and 21

[9] I note here that the archives submitted in reply that the appellant's indication that she did not seek access to photos, post-mortem examination reports and certain other information meant that she was no longer seeking access to identified pages in record 7. As the appellant did not submit sur-reply representations or confirm that those portions of record 7 are no longer at issue, I decided to consider the application of the exemption in section 19 to record 7, in its entirety.

## **ISSUES:**

- A. Does the discretionary solicitor-client privilege exemption at section 19 apply to the records?
- B. Did the archives exercise its discretion under section 19? If so, should the IPC uphold the exercise of discretion?

## **DISCUSSION:**

**Preliminary issue: What is the effect of the affected party's consent in this appeal?**

[10] The appellant provided me with a consent signed by the affected party, which

confirms that the appellant acts as his agent in this appeal and that the archives can release his personal information to her. The appellant provided this document in response to the archives' position that the signed authorization from the affected party that she had previously provided did not meet the requirements of section 21(1)(a).<sup>2</sup>

[11] Section 21(1)(a) provides that personal information is not exempt from disclosure under section 21(1) if the individual to whom the information relates has consented to its disclosure. However, a consent from an affected party does not provide an exception to the section 19(b) exemption. Accordingly, my decision in this appeal does not turn on the consent of the affected party, given my finding under section 19(b) of the *Act*. However, I will consider the effect of the affected party's consent under Issue B, in discussing the archives' exercise of discretion under section 19.

**Issue A: Does the discretionary solicitor-client privilege exemption at section 19 apply to the records?**

[12] The archives denied access to records 7 and 34 under section 19(b) of the *Act*. Section 19 states:

A head may refuse to disclose a record,

- (a) that is subject to solicitor-client privilege;
- (b) that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation; or
- (c) that was prepared by or for counsel employed or retained by an educational institution for use in giving legal advice or in contemplation of or for use in litigation.

[13] Section 19 contains two branches. Branch 1 arises from the common law and section 19(a) of the *Act*. Branch 2 is a statutory privilege and arises from section 19(b) or, in the case of an educational institution, from section 19(c). The statutory and common law privileges, although not necessarily identical, exist for similar reasons.

[14] As noted, the archives relies on section 19(b), the statutory litigation exemption in branch 2 that is available in the context of Crown counsel giving legal advice or conducting litigation.

[15] Records that form part of the Crown brief, including copies of materials provided to prosecutors by police, and other materials created by or for counsel, are exempt

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<sup>2</sup> To satisfy section 21(1)(a), the consenting party must provide a written consent to the disclosure of his or her personal information in the context of an access request under the *Act*. See Order PO-1723.

under the statutory litigation privilege aspect of branch 2.<sup>3</sup> Branch 2 of section 19 does not exempt records in the possession of the police, created in the course of an investigation, just because copies later become part of the Crown brief.<sup>4</sup> However, even documents not originally created in contemplation of or for use in litigation, which are copied for the Crown brief as the result of counsel's skill and knowledge, are exempt under branch 2 statutory litigation privilege.<sup>5</sup>

[16] Termination of litigation does not affect the application of statutory litigation privilege under branch 2.<sup>6</sup> The application of branch 2 has been limited on the following common law grounds as stated or upheld by the Ontario courts: the lack of a "zone of privacy" in connection with the particular records at issue (meaning there is no privilege to begin with) and the waiver of the privilege by the institution.<sup>7</sup>

### ***Representations of the parties***

#### *Representation of the archives*

[17] The archives provided representations that address the common law privilege in branch 1, as well as the statutory privilege in branch 2. However, as I make my finding under the statutory litigation privilege in section 19(b), I will only set out the representations that are relevant to it.

[18] The archives submits that branch 2 of section 19 applies to the records at issue because they form part of a Crown brief that was prepared for and/or by Crown counsel in contemplation of, or for use in litigation. For context, the archives describes the records that were at issue before the appellant narrowed the request to records 7 and 34, stating that the records include all items typically found within a Crown Brief, such as:

... transcripts of the preliminary inquiry, synopses, witness lists (which include detectives and civilians), police statements/notes, various reports including supplementary police reports, post mortem reports, lab reports, details of the investigation, witness interviews/statements, witnesses in brief, Crown notes and Crown correspondence.

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<sup>3</sup> Order PO-2733.

<sup>4</sup> Orders PO-2494, PO-2532-R and PO-2498, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2009] O.J. No. 952; motion for leave to appeal dismissed, Doc. M37397 (C.A.).

<sup>5</sup> *Ontario (Ministry of Correctional Services) v. Goodis*, 290 D.L.R. (4th) 102, [2008] O.J. No. 289 (*Goodis*); and Order PO-2733.

<sup>6</sup> *Ontario (Attorney General) v. Ontario (Information and Privacy Commission, Inquiry Officer)*, (2002), 62 O.R. (3d) 167, 2002 CanLII 18055 (C.A.) (*Big Canoe 2002*); application for leave to appeal to the SCC dismissed May 15, 2003, S.C.C. File No. 29572, S.C.C. Bulletin, 2003, p. 776.

<sup>7</sup> See *Ontario (Attorney General) v. Holly Big Canoe* (2006), 80 O.R. (3d) 761, 2006 CanLII 14965 (Div. Ct.) (*Big Canoe 2006*).

[19] The archives submits that confidential prosecution files, such as Crown briefs, have been held by numerous IPC orders and court judgments to be exempt from disclosure in their entirety.<sup>8</sup> In support of its position, the archives relies on the Ontario Court of Appeal judgment in *Big Canoe 2002* and a later 2006 decision of the Ontario Divisional Court (*Big Canoe 2006*), that reviewed and reiterated the rationale for exempting Crown briefs under section 19.<sup>9</sup> The archives refers me to the following passages in Justice Lane's reasons in *Big Canoe 2006*:

[23] **The scheme of the Act clearly places a heavy emphasis on the protection of the Crown Brief.** It is not difficult to see why that would be so. It may well contain material of a nature which would embarrass or defame third persons, disclose the names of persons giving information to the police, disclose police methods and so forth.

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[43]... **Further, the s. 19 exemption has an important role to play in protecting the Crown brief from production to the public "upon simple request". The protection of the Crown brief has continuing relevance to the public interest in protecting police methods and sources and in protecting the identity of witnesses and encouraging others to come forward and this relevance continues long after the litigation has ended....There should be no generalized public access to the Crown's work product even after the case has ended.** [Emphasis added by the archives].<sup>10</sup>

[20] The archives submits that since the records at issue in this appeal clearly form part of a Crown brief, the statutory exemption in section 19(b) of the *Act* applies. According to the archives, these records came into existence as a result of litigation, and include synopses, evidence prepared and collected specifically for Crown counsel, legal analysis of the evidence, as well as the Crown's own work product. In addition, the archives submits that the records would have been used by the Crown to make its case against the affected party and, in their totality, constitute the evidence the Crown relied upon to support the prosecution of the affected party, which resulted in his conviction.

[21] Noting that previous IPC orders have held that branch 2 of section 19 has no temporal limit and applies to a wide range of materials obtained and prepared for actual or potential litigation, the archives submits that the records prepared by or for Crown counsel "in contemplation of or for use in litigation" in the criminal context deal with

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<sup>8</sup> Orders PO-2993, PO-3348, and PO-2769.

<sup>9</sup> The archives also provided an excerpt from *Big Canoe 2002*, cited above, at para 14.

<sup>10</sup> *Big Canoe 2006* at paras 23 and 43.

sensitive matters by their very nature, and these matters continue to be sensitive long after a prosecution is completed. According to the archives, the plain meaning of the words used under branch 2 of section 19 is meant to give Crown counsel a permanent exemption for such records.<sup>11</sup>

*Representations of the appellant*

[22] With her representations, the appellant provided me with a signed consent letter from the affected party, indicating that she acts on his behalf and as his agent in the request for access to his personal information held by the archives. The appellant explains that her interest, and that of the affected party, is in obtaining access to the trial transcript and the “relevant statements” about the affected party.

This request is for trial transcripts, which contain graphic details involving the deaths of [the affected party’s] common law spouse and children. We do not require photos, post-mortem examination reports, or testimony related to those, as this information was summarized already in Record 6 [the preliminary inquiry transcript], which was supplied in the past year [to] us by the Archives.

[23] In her representations, the appellant explains that she is seeking record 34, which is the statement of the lead investigator on the case who arrived at the scene within one hour of the incident and who was one of two officers who interviewed the affected party following the incident. The appellant submits that since this individual is deceased and his statement was used during the criminal trial, his statement should not fall under section 19 of the *Act*. She further submits that section 19 of the *Act* does not apply to the statement because it contains statements that the affected party made freely to the lead investigator. The appellant also points to the fact that since this incident occurred over 50 years ago, there should be minimal concern about disclosing investigative techniques used by the police in the 1968. The appellant states that the names and contact information of the witnesses are not relevant at this point, “but anything stated during the criminal trial will be beneficial to provide context and history for [the affected party], as he was present and deemed fit to stand trial, but not in the mental state to recall any details...”.

[24] In addition, the appellant submits that record 7 could also be severed to remove witness names and contact information before disclosing it to her. She submits that much of this information is already available to them from the disclosure of other records in this appeal, including the preliminary inquiry transcript, but also from media articles and through a separate access request under the *Personal Health Information Protection Act*. She submits that while there is nothing in record 7 that does not relate to the affected party, “if there is concern related to correspondence between the crown

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<sup>11</sup> *Big Canoe 2006* at para 29.

and other offices, this can be redacted as well.”

*Reply representations of the archives*

[25] In reply, the archives acknowledges that the affected party provided the appropriate consent under section 21(1)(a) of the *Act* to disclose his personal information in the records to the appellant. However, the archives submits that because the records at issue, including any personal information of the affected party in the records, are part of the Crown brief or prosecutor’s file, section 19 continues to apply, and as such, the records as a whole may not be disclosed.

[26] The archives refers to the appellant’s statement that she is seeking record 7 in order to view all information that was shared during the criminal trial and, particularly, that her request is for the transcript of the trial. In response, the archives clarifies that the records at issue are not ones typically entered into the court record or ones that formed part of the court file. Specifically, the archives says that record 7 is not the trial transcript. Rather, records 7 and 34 are materials from the Crown brief, including the following: the Crown’s compilation of their understanding of the facts of the case, a description of the scene of the crime, an organized list of the witnesses involved, a summary of who they are and their relation to the case, their statements and a list of exhibits and their description. In addition, the archives points out that handwritten and typewritten Crown notes are found throughout the record, thereby illustrating that the record was created and used by Crown counsel to support them in their preparation for, and use in, the trial. The archives submits that while some of the information in the records may have been entered into the court record through exhibits or witnesses, the records at issue are not the court record, but rather were compiled specifically to form the Crown brief.

[27] The archives reiterates in its reply representations the importance of protecting solicitor-client privileged records and responds to the appellant’s comment that the records at issue were created many years ago by reiterating that branch 2 of section 19 has no temporal limit and continues to apply after the litigation ends. Regarding the appellant’s position that personal information could be redacted from the records at issue, the archives also maintains that the records cannot reasonably be severed to disclose any non-identifying, non-exempt information from the Crown brief.<sup>12</sup>

[28] As stated, I invited the appellant to submit sur-reply representations, specifically, on the archives’ position on the permanent nature of the Crown brief privilege in section 19(b), its exercise of discretion under section 19 and the clarification provided regarding the nature of record 7. The appellant did not submit sur-reply representations.

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<sup>12</sup> The archives relies on *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)*, [1997] O.J. No. 1465, 102 O.A.C. 71, 46 Admin L.R. (2d) 115 (Div. Ct) at paras 12 and 17 for the finding that section 19 is a “class-based” exemption that, once it is found to apply, applies to the whole record.



### ***Analysis and finding***

[29] For the reasons outlined below, I find that records 7 and 34 are exempt from disclosure under the statutory litigation privilege in section 19(b) of the *Act*.

[30] In Order PO-2733, former Senior Adjudicator John Higgins found that records forming part of the Crown brief, including copies of materials provided to prosecutors by police, and other materials created by or for counsel, are exempt under the statutory litigation privilege aspect of branch 2 of section 19 of the *Act*. In making this finding, he stated that:

... based on the approach taken in *Big Canoe 2002*, *Big Canoe 2006* and *Goodis*, I conclude that among other records capable of falling within its terms, branch 2 of the exemption exists to protect the Crown brief from being accessible to the public "upon simple request" and thus provides a form of blanket protection for prosecution records in the hands of Crown counsel, including copies of police records, without the need for showing interference with a particular law enforcement, prosecutorial or personal privacy interest. The Legislature has thus deemed it appropriate to provide somewhat greater protection for copies of records in the hands of Crown counsel than for the original records in the hands of police, given the additional use to which the Crown puts these records in performing its prosecutorial functions and the importance of the role Crown counsel plays in this respect, as evidenced by the need to make protection of their work product permanent in that context.<sup>13</sup>

[31] I agree with and adopt the reasoning in Order PO-2733, which has also been adopted in many other IPC orders.<sup>14</sup>

[32] I agree with the archives that the affected party's signed consent is not relevant to determining the issue of the solicitor-client privilege exemption under section 19 of the *Act*, unlike the personal privacy exemption in section 21(1).

[33] This is because the records at issue, including the affected party's personal information, are found in the Crown brief. Based on my consideration of records 7 and 34, I find that they reflect evidence collected and prepared specifically for Crown counsel, along with the work product of the Crown, including his annotations to the records. The records at issue reveal Crown counsel's understanding of the crime, Crown counsel's methodology and approach to the litigation, and the materials Crown counsel relied upon in preparing the case for trial. Given the context in which records 7 and 34 were created, I am satisfied that each record is properly viewed as forming part of the

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<sup>13</sup> Order PO-2733 at page 10.

<sup>14</sup> Orders PO-2769, PO-2801, PO-3095 and PO-3321.

Crown brief in this case and is, consequently, exempt under branch 2 of section 19 as having been prepared by or for Crown counsel in contemplation of, or for use in, litigation.

[34] The privilege that exists in documents found to be exempt under branch 2 of section 19 is permanent and is not limited temporally based on the conclusion of the criminal matter or the passage of time. As the adjudicator in Order PO-2733 noted, the rationale for the permanent protection of the Crown brief as a class of record was recognized and affirmed by the courts in *Big Canoe 2006* and *Big Canoe 2002*.

[35] As I have found that the statutory litigation privilege in section 19(b) applies to the records as a whole, the records cannot be severed to disclose the affected party's information to the appellant. To do so would be to order disclosure of information that is exempt under section 19(b).

[36] While I am sympathetic to the reasons of the affected party, and the appellant who is seeking this information on his behalf, the law relating to Crown briefs is clear that there should be no generalized public access to the Crown's work product even after the case has ended.<sup>15</sup> Accordingly, for the reasons outlined above, I find that section 19(b) applies to records 7 and 34, and that they are exempt from disclosure, subject to my review of the archive's exercise of discretion under section 19 of the *Act*.

**Issue B: Did the archives exercise its discretion under section 19? If so, should the IPC uphold the exercise of discretion?**

[37] Section 19 of the *Act* is discretionary. This means that the archives had the discretion to disclose the withheld records, even though they qualified for exemption. This is the essence of a discretionary exemption. As I have upheld the archives' decision to deny access in full to records 7 and 34 under section 19(b), I will now consider its exercise of discretion under that exemption.

[38] On appeal, the IPC may review the institution's decision in order to determine whether it exercised its discretion and, if so, to determine whether it erred in doing so. It is open to me to find that an institution erred in exercising its discretion where, for example, it appears to have done so in bad faith or for an improper purpose, where it takes into account irrelevant considerations, or whether it fails to take into account relevant considerations. In such a case, I may send the matter back to the institution for an exercise of discretion based on proper considerations. However, if I were to do so in this appeal, I am not permitted to substitute my own discretion for that of the archives.<sup>16</sup>

[39] With the inquiry documentation on this issue, I provided the parties with a list of

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<sup>15</sup> *Big Canoe 2006*, at para 45.

<sup>16</sup> Orders PO-1679 and MO-1755.

considerations that were possibly relevant, noting that not all those listed will necessarily be relevant, and additional unlisted considerations may also be relevant.<sup>17</sup>

### ***Representations***

#### *Representations of the archives*

[40] The archives maintains that, in refusing to disclose records 7 and 34, it exercised its discretion in good faith, in a reasonable manner and for purposes that are consistent with the intent of the *Act* and the stated exemption.

[41] The archives submits that, in exercising its discretion, it considered the following relevant factors:

- a. The interest inherent within the section 19 exemption;
- b. The appellant's legitimate interest in gaining access to the records;
- c. The sensitive nature of the records' contents and the confidential context behind their creation;
- d. The privacy interests of other individuals in the records;
- e. The fact that Crown brief materials are not available to the public at large and were specifically created for the purpose of a criminal proceeding;
- f. The ability of a prosecutor to protect sensitive materials and administer justice in a fair, equitable and effective manner;
- g. Certain records relate to the prosecutor's exercise of discretion; and
- h. The archives took the law and principles as provided for by the courts into consideration when exercising its discretion not to disclose records clearly protected by solicitor-client privilege.

[42] While acknowledging that section 10(2) of the *Act* requires disclosure of as much of a responsive record as can be reasonably severed without disclosing information that is exempt, the archives submits that the records at issue cannot reasonably be severed without revealing information that is subject to section 19. Accordingly, the archives submits that it properly exercised its discretion under section 19 of the *Act*.

#### *Representations of the appellant*

[43] In addressing the archives' exercise of discretion, the appellant refers me again

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<sup>17</sup> Orders P-344 and MO-1573.

to the signed consent from the affected party and submits, in reference to record 7 in particular, that a relevant consideration is an individual's right of access to their own personal information. She submits that the affected party wants and needs to know what occurred over 50 years ago. With respect to record 34, the appellant reiterates the relevance and importance of this record, given that the lead investigator (whose statement it is) was the one who informed the affected party about the incident.

[44] The appellant makes further submissions about sympathetic, compassionate and compelling personal reasons related to the affected party to support the disclosure of the records at issue in this appeal. I have considered all of these reasons, despite not summarizing them in this order. They are of a deeply personal nature and might serve to identify the affected party in this public order.

*Reply representations of the archives*

[45] In reply, the archives submits that it has considered the additional information provided by the appellant in her representations, particularly the compassionate reasons for access. While recognizing that, in general, individuals should have access to their own personal information, the archives submits that it must balance this factor with the existing relevant factors outlined in its initial representations, despite being sympathetic to the affected party's reasons.

[46] The archives refers to *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, where the Supreme Court of Canada stressed the categorical nature of solicitor-client privilege when discussing the exercise of discretion.<sup>18</sup> The archives submits that it has considered the longstanding and substantive right of solicitor-client privilege, which is fundamental to the proper functioning of the legal system, and it asserts that on balance, the interests protected by section 19 of the *Act* outweigh the interests of the appellant in accessing the information remaining at issue.

***Analysis and finding***

[47] Based on my review of the records and the parties' representations, I find that the archives' exercise of discretion in denying access to records 7 and 34 under section 19(b) was proper in the circumstances.

[48] To begin, I acknowledge that the affected party's desire to obtain information about the incident, through the appellant's access request, is sympathetic and compelling, and that his reasons appear genuine. On the other hand, I accept that the archives considered the circumstances surrounding the request, including the positions of the affected party and the appellant, and the consent provided by the affected party for the disclosure of his personal information to the appellant. From the archives'

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<sup>18</sup> 2010 SCC 23, [2010] 1 S.C.R. 815 at para 75; Order PO-3950.

representations, it is evident that it took into account the affected party's desire to obtain information about the incident, as well as the additional considerations raised in the appellant's representations that I did not set out in this order.

[49] I accept the archives' conclusion that, in its view, these considerations, including the affected party's right to access his own personal information, were outweighed by the interests protected by section 19, and section 19(b) in particular, which recognizes the Crown's need for a protected space in which to investigate and prepare a case for trial. Therefore, I am satisfied that the archives considered the purposes of the *Act* and the important purpose of the section 19 exemption, that it took into account relevant considerations, and based on the nature of its submissions, that it exercised its discretion in good faith.

[50] I find that the archives properly exercised its discretion under section 19 of the *Act* in deciding not to disclose these portions of the Crown brief. Accordingly, I uphold the archives' exercise of discretion in refusing to disclose records 7 and 34 under section 19(b). In light of this finding, it is not necessary for me to determine whether the personal privacy exemption in section 21(1) also applies to them.

**ORDER:**

I uphold the archives' decision, and I dismiss the appeal.

Original Signed By: \_\_\_\_\_

Daphne Loukidelis  
Adjudicator

June 24, 2021 \_\_\_\_\_