

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4277

Appeal MA21-00282

Corporation of the County of Middlesex

November 22, 2022

Summary: The Corporation of the County of Middlesex (the county) received an eight-part request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to rockwork projects in specified area during a certain time frame and involving a particular address and certain named individuals. At issue in this appeal is the county's decision to withhold some of the responsive records under the discretionary exemption at section 12 (solicitor-client privilege) of the *Act*. In this order, the adjudicator upholds the county's decision, and dismisses the appeal.

Statute Considered: The *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of "personal information") and 12.

Orders Considered: Orders MO-2622 and MO-3330.

Cases Considered: *Descôteaux v. Mierzwinski*, [1982] 1 S.C.R. 860; *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1997) 102 O.A.C. 71, 46 Admin L.R. (2d) 115, [1997] O.J. No. 1465 (Div. Ct.); *Canada (Ministry of Public Safety and Emergency Preparedness) v. Canada (Information Commissioner)*, 2013 FCA 104.

OVERVIEW:

[1] The Corporation of the County of Middlesex (the county) received an eight-part request under the *Municipal Freedom of Information and Protection of Privacy Act* (the

Act) for various types of records,¹ including drawings, surveys, and correspondence relating to one or more roadworks project(s) in a specified area, during a certain timeframe, and/or involving a particular address and up to two named individuals.

[2] The county issued a decision granting partial access to the responsive records. The county denied some records under the discretionary exemption at section 12 (solicitor- client privilege) of the *Act*. The county further advised that some requested records did not exist.

[3] The requester (now the appellant) appealed the county's decision to the Information and Privacy Commissioner of Ontario (IPC).

[4] The IPC appointed a mediator to explore resolution. During mediation, some issues were narrowed,² and the county provided the appellant with an index of records³ and information about the records withheld under section 12. The appellant questioned the county's application of the section 12 exemption. The county issued a revised decision and disclosed some of the records that had initially been withheld under section 12. Access to the remaining information withheld under section 12 could not be resolved by further mediation. Therefore, the appeal proceeded to the adjudication stage, where an adjudicator may conduct an inquiry.

[5] As the adjudicator of this appeal, I began a written inquiry under the *Act* by sending a Notice of Inquiry, setting out the facts and issues on appeal, to the county. I sought and received written representations from the county in response. I then sought written representations from the appellant in response to the Notice of Inquiry and the non-confidential portions of the county's representations.⁴ The parties also provided reply and sur-reply representations.

[6] For the reasons that follow, I uphold the county's decision, and dismiss the appeal.

¹ The requester asked for the following types of records associated with the roadworks project(s): any design drawings; any road or property surveys; any internal or external correspondence, including emails; any staff or consultant notes and all emails, that reference [a particular address in London, Ontario], [named individual] and/or [named individual]; any phone call records; the project numbers; the Engineer(s) of Record; and inspection reports.

² During mediation, the county provided the appellant with information about the adequacy of its search, and the appellant accepted this. The county also identified records that had been inadvertently omitted from the record disclosure package initially sent to the appellant and explained that the appellant already had access to these records. The appellant accepted the county's information about the inadvertently omitted records and advised that these records did not need to be sent to the appellant.

³ In response to the appellant stating that he did not know what records the county had withheld and on what basis.

⁴ Portions of the county's representations were withheld for confidentiality concerns, under *Practice Direction 7* of the IPC's *Code of Procedure*, which relates to the sharing of representations.

RECORDS:

[7] The records at issue (records 10-20) are identified in the county's revised index of records, which describes the records that have been withheld under section 12 as email correspondence between the county engineer and the county legal department.⁵

ISSUES:

Preliminary issue: Do the records contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?

- A. Does the discretionary solicitor-client privilege exemption at section 12 of the *Act* apply to the records?
- B. Did the county exercise its discretion under section 12? If so, should the IPC uphold the exercise of discretion?

DISCUSSION:

Preliminary issue: Do the records contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?

[8] In the appellant's initial representations on the county's exercise of discretion (specifically, with respect to the factors that the county considered or did not consider in deciding whether to withhold the records that may qualify for the section 12 exemption), the appellant made representations about his personal interests.

[9] I decided to seek representations from the parties about whether any of the records withheld contain the appellant's "personal information," as that term is defined in section 2(1) of the *Act*. The reason for this is that if the county refuses to give an individual access to their own personal information, that refusal takes place under section 38(a) (discretion to refuse requester's own personal information), read with section 12, and not under section 12 alone. When a record is withheld under section 38(a), an institution must show that it considered whether a record should be released to the requester because the record contains their personal information.⁶

[10] Section 2(1) of the *Act* defines "personal information" as "recorded information

⁵ Specific dates and page numbers are identified in the revised index, but they do not need to be set out here.

⁶ Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides some exemptions from this general right of access to one's own personal information. The discretionary nature of section 38(a) ("may" refuse to disclose) recognizes the special nature of requests for one's own personal information and the desire of the Legislature to give institutions the power to grant requesters access to their own personal information (Order M-352).

about an identifiable individual." "Recorded information" is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps.⁷ Information is "about" the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. Generally, information about an individual in their professional, official or business capacity is not considered to be "about" the individual.⁸

[11] The county states that apart from the fact that the records at issue were precipitated by a letter from the appellant to the county (which is not at issue in this appeal), the records do not contain his personal information.

[12] The appellant states that he cannot provide representations about whether the records withheld under section 12 also contain information that would qualify as personal information under the *Act* (such as views or opinions about the appellant). However, the appellant's sur-reply representations highlight the importance of his property interests; he states that he has a direct interest in having pertinent information about the project as it relates to his property.

[13] I am satisfied, upon my further review of the appellant's representations (and the records themselves) that the appellant's "personal information" is not at issue in the records. To the extent that any records might contain the appellant's name and professional contact information, this is not his "personal information" under the *Act*. Under paragraph (h) of the definition of "personal information" at section 2(1) of the *Act*, an individual's name is personal information "if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual." I am satisfied that that is not the case here. As mentioned, information appearing in a professional or business context, including contact information,⁹ is not "personal information" under the *Act*, unless it reveals something of a personal nature about an individual.¹⁰ I find that the appellant's business contact information does not reveal something personal about him in the circumstances, therefore, it does not qualify as "personal information" under the *Act*.

[14] To the extent that the subject matter of the records may relate to any of the appellant's property interests, this is not his "personal information" under the *Act*, as

⁷ See the definition of "record" in section 2(1).

⁸ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225. See also sections 2(2.1) and (2.2), which state:

(2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

⁹ Sections 2(2.1) and 2(2.2) of the *Act*.

¹⁰ Orders P-1409, R-980015, PO-2225 and MO-2344.

held in a long line of IPC orders.¹¹

[15] Therefore, in considering the county's claim of section 12, I will not consider whether section 38(a), read with section 12 applies. Rather, I will consider whether section 12 applies, read alone. This also means that in assessing the county's exercise of discretion (Issue B, below), one relevant factor is that none of the records contain personal information belonging to the appellant.

Issue A: Does the discretionary solicitor-client privilege exemption at section 12 of the *Act* apply to the records?

[16] Section 12 exempts certain records from disclosure, either because they are subject to solicitor-client privilege or because they were prepared by or for legal counsel for an institution. It states:

A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation.

[17] Section 12 contains two different exemptions, referred to in previous IPC decisions as "branches." The first branch ("subject to solicitor-client privilege") is based on common law. The second branch ("prepared by or for counsel employed or retained by an institution...") is a statutory privilege created by the *Act*. The institution must establish that at least one branch applies.

[18] The county relies on both the common law communication privilege and the statutory litigation privilege to withhold all of the records at issue under section 12 of the *Act*.

[19] As I explain below, I find that the common law solicitor-client communication privilege applies; I therefore do not need to consider whether the statutory communication privilege also applies.

Branch 1: common law privilege

[20] At common law, solicitor-client privilege encompasses two types of privilege: solicitor-client communication privilege and litigation privilege. As stated, the county relies on solicitor-client communication privilege.

[21] The rationale for the common law solicitor-client communication privilege is to ensure that a client may freely confide in their lawyer on a legal matter.¹² This privilege protects direct communications of a confidential nature between lawyer and client, or

¹¹ See in this regard Orders MO-2081, MO-2695, MO-2792, MO-3066, MO-3125 and MO-4108.

¹² Orders PO-2441, MO-2166 and MO-1925.

their agents or employees, made for the purpose of obtaining or giving legal advice.¹³ The privilege covers not only the legal advice itself and the request for advice, but also communications between the lawyer and client aimed at keeping both informed so that advice can be sought and given.¹⁴

[22] The privilege may also apply to the lawyer's working papers directly related to seeking, formulating or giving legal advice.¹⁵

[23] Confidentiality is an essential component of solicitor-client communication privilege. The institution must demonstrate that the communication was made in confidence, either expressly or by implication.¹⁶ The privilege does not cover communications between a lawyer and a party on the other side of a transaction.¹⁷

[24] Under the common law, a client may waive solicitor-client privilege. An express waiver of privilege happens where the client knows of the existence of the privilege, and voluntarily demonstrates an intention to waive the privilege.¹⁸ There may also be an implied waiver of solicitor-client privilege where fairness requires it, and where some form of voluntary conduct by the client supports a finding of an implied or objective intention to waive it.¹⁹ Generally, disclosure to outsiders of privileged information is a waiver of privilege.²⁰ However, waiver may not apply where the record is disclosed to another party that has a common interest with the disclosing party.²¹

The county's representations

[25] The county submits that solicitor-client communication privilege applies to all the withheld records.

[26] The county explains that the county Engineer's Office received a six-page letter from the appellant with a number of allegations against the county; the county engineer viewed these allegations to be contentious in nature, and proceeded to forward the letter to the county's legal counsel for the purposes of seeking legal advice (the initial letter). A copy of this initial letter was attached to the county's representations.

[27] The county submits that all of the records stem from, and exist, due to the initial

¹³ *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).

¹⁴ *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.); *Canada (Ministry of Public Safety and Emergency Preparedness) v. Canada (Information Commissioner)*, 2013 FCA 104.

¹⁵ *Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27.

¹⁶ *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); Order MO-2936.

¹⁷ *Kitchener (City) v. Ontario (Information and Privacy Commissioner)*, 2012 ONSC 3496 (Div. Ct.)

¹⁸ *S. & K. Processors Ltd. v. Campbell Avenue Herring Producers Ltd.* (1983), 45 B.C.L.R. 218 (S.C.).

¹⁹ *R. v. Youvarajah*, 2011 ONCA 654 (CanLII) and Order MO-2945-I.

²⁰ J. Sopinka et al., *The Law of Evidence in Canada* at p. 669; Order P-1342, upheld on judicial review in *Ontario (Attorney General) v. Big Canoe*, [1997] O.J. No. 4495 (Div. Ct.).

²¹ *General Accident Assurance Co. v. Chrusz*, cited above; Orders MO-1678 and PO-3167.

letter that the county engineer received. The county states that receiving the initial letter generated a continuum of communications in which legal advice was given from county lawyers to the county engineer on a confidential basis for the purpose of receiving legal advice. In support of its position, the county cites the Federal Court of Appeal in *Canada (Ministry of Public Safety and Emergency Preparedness) v. Canada (Information Commissioner)*, affirming the principle that "all communications between a solicitor and a client directly related to the seeking, formulating or giving of legal advice are privileged, along with communications within the continuum in which the solicitor tenders advice."²²

[28] In addition, the county submits that the communications between the county and its legal counsel were confidential because the records contain confidential discussions related to the initial letter and subsequent emails received.

[29] The county submits that all of the records are protected by common law communication privilege, because all the records were confidential communications between county lawyers and the county engineer, for the purpose of seeking and receiving confidential legal advice on a real and pressing concern.

[30] The county cites the Supreme Court of Canada case *Descôteaux v. Mierzwinski*,²³ which confirmed that common law privilege protects direct communications of a confidential basis between a lawyer and client, or their agents or employees, made for the purpose of obtaining or the giving of professional legal advice. Here, the county submits that as a direct result of the county engineer receiving the initial letter, a continuum of communications (the records at issue) was generated.

[31] In addition to discussing the records generally, the county also provided more detailed representations about each of the records withheld. For the purpose of this order, it is not necessary to set the county's representations about each of the records at issue in this appeal because the format was the same for each. I will set out the county's representations about records 11 and 12 as an example:

The County submits that Records 11 and 12, which are comprised of [number] email exchanges on [redacted dates] between [county] Legal Counsel and the County Engineer with respect to [redacted description of the contents of the email(s)] -- and therefore, generated a continuum of communications and falls within the scope of common law solicitor-client privilege under section 12 of the Act.

The appellant's representations

[32] The appellant submits that the county's representations "shelter" all records as a response to a letter that the county describes as "contentious," and then submits that

²² 2013 FCA 104, para. 26.

²³ [1982] 1 S.C.R. 860.

the emails in question are part of a continuum of communications.

[33] The appellant submits that it is not enough to say that the county engineer was concerned with the contents of the initial letter and viewed it to be contentious in nature.

[34] The appellant submits that privilege will only attach to the records if they are specifically be with respect to seeking, formulating or giving of legal advice. He submits that communication or information that does not constitute legal advice is not protected by section 12. Therefore, he states that the question to be considered here is whether disclosure of each record would reveal legal advice.

[35] In addition, the appellant submits that simply because counsel is listed as a recipient on an email does not mean the email relates to legal advice, as communications including counsel simply for informational purposes and not to obtain legal advice would not be exempt under section 12(1), citing Order MO-3330. He argues that the county should be expected to provide specific representations as to the application of section 12 with respect to each record.²⁴ The appellant questions how each and every email constitutes documents prepared for use in giving legal advice. The appellant states that there is neither any indication that the records were prepared for use in giving or seeking legal advice, nor that the records constitute "highly confidential or sensitive legal advice" between the county's lawyers and county staff.

[36] In addition, the appellant asserts that the county failed to provide an adequate description of each record and provide representations as to the application of section 12 to each specific record. However, given what I have set out above in summarizing the county's representations, these arguments are unfounded and I will not address them further.

[37] The appellant also addresses other matters that are not relevant to whether the records are exempt under section 12, such as the fact that the initial letter is not a demand letter and its writer (the appellant) is not a lawyer, so I will not address them in this order.

The parties' replies

[38] In reply to the appellant's representations, the county provided further representations about each of the records withheld individually (this time, sharing these representations in full). The county also explains in detail why it believed the initial letter to be contentious, setting out the many concerns and allegations against the county contained in the original letter that led it to see the initial letter that way.²⁵ As

²⁴ The appellant cites Order MO-3330.

²⁵ I had invited the county to provide written representations on whether the records might contain the "personal information" of the appellant, as that term is defined in section 2(1) of the *Act*. However, the county also responded to other aspects of the appellant's representations, so I summarize them here.

there is no dispute about the contents of the initial letter, and its precise nature is not relevant to the issue before me, it is not necessary to set out the concerns and allegations here.

[39] With respect to the appellant's view that there is no evidence that the records were used in giving or receiving legal advice, the county discusses the nature of the letter, the concerns that it raised, and the fact that the county engineer found these matters necessitated legal advice. The county explains that these records involved legal counsel answering questions and providing guidance in the appropriate legal context with respect to addressing the concerns and allegations that started from the initial letter; as the matter developed, this continued. The county submits that communication can be privileged without have specific words seeking advice, due to the nature of the solicitor- client relationship.²⁶ The county also relies on IPC Order MO-2622, which found that a continuum of communications must represent communications between a solicitor and his or her client, which arise in the context of the solicitor-client relationship. The county submits the emails at issue all arise out of this relationship and the advice the legal county sought following the initial letter.

[40] In response to the county's representations, the appellant essentially reiterates many points made earlier in the inquiry. The appellant asserts that the "very heart" of this appeal is that the county "is sheltering unidentified/undescribed records under a continuum of communication."

Analysis/findings

[41] Having reviewed each of the records at issue and the parties' representations, including the confidential details about the contents of the records provided in the county's initial representations, I have no difficulty accepting the county's representations and finding that each record at issue contains communications that were intended to be confidential and were clearly made for the purpose of seeking or receiving legal advice.

[42] The Ontario Divisional Court has held that, "[o]nce it is established that a record constitutes a communication to legal counsel for advice, . . . the communication *in its*

²⁶ The county cites at some length court decision *Balabel v. Air India*, [1988] Ch 317, a British court decision which held that something can be privileged without having specific wording seeking advice. I note that another British court, in *Lorley Financing (Jersey) No 30 Limited v. Credit Suisse Securities (Europe) Limited et Ors*, [2022] EWCA Civ 1484, recently described the approach in *Balabel v. Air India* as "discountenanc[ing] a narrow or nit-picking approach to documents and has ruled out an approach which takes a record of a communication sentence by sentence and extends the cloak of privilege to one and withhold it from another." It is not necessary for me to specifically accept that the reasoning in the British case cited by the county is applicable on the question of whether the emails at issue are subject to solicitor- client privilege, as the Ontario Divisional Court has similarly held that communication to legal counsel for advice is subject to privilege in its entirety (see paragraph 42 of this order).

entirety is subject to privilege,"²⁷ and that the privilege "protects the entire communication and not merely those specific items which involve actual advice."²⁸ Past IPC orders have also recognized that records containing direct solicitor-client communications relating to the seeking or receiving of legal advice are subject to a "class- based privilege," and therefore, are not subject to severance.²⁹

[43] I agree with the reasoning in the Ontario court decision and in these past IPC orders, and adopt it in this appeal.

[44] There is no dispute that the county and its legal counsel have a solicitor-client relationship. I accept that the concerns and allegations found in the initial letter were of such a nature that the county engineer, on behalf of the town, sought legal advice about them, and that these communications continued between the town and its legal counsel concerning these matters. As a result, the reasoning in Order MO-3330 upon which the appellant relies (about the inclusion of legal counsel on an email for informational purposes) is not relevant in the circumstances of this appeal.

[45] For these reasons, I find that the records are subject to common law solicitor-client communication privilege, under branch one of section 12 of the *Act*. Since I find that branch one applies, it is not necessary to discuss branch two of section 12.

[46] There is no evidence before me that solicitor-client privilege has been lost through waiver. Therefore, subject to my review of the county's exercise of discretion, the records at issue are exempt under section 12.

Issue B: Did the county exercise its discretion under section 12? If so, should the IPC uphold the exercise of discretion?

[47] The section 12 exemption is discretionary (the institution "may" refuse to disclose), meaning that the institution can decide to disclose information even if the information qualifies for exemption. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[48] In addition, the IPC may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose;
- it takes into account irrelevant considerations; or
- it fails to take into account relevant considerations.

²⁷ *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1997) 102 O.A.C. 71, 46 Admin L.R. (2d) 115, [1997] O.J. No. 1465 (Div. Ct.).

²⁸ *Ibid.*

²⁹ See, for example, Orders MO-3409 and MO-2486.

[49] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.³⁰ The IPC cannot, however, substitute its own discretion for that of the institution.³¹

What considerations are relevant to the exercise of discretion?

[50] Some examples of relevant considerations are:

- the purposes of the *Act*, including the principles that: information should be available to the public and exemptions from the right of access should be limited,
- the specific the wording of the exemption and the interests it seeks to protect,
- whether the requester is seeking their own personal information,
- whether the requester has a sympathetic or compelling need to receive the information,
- whether the requester is an individual or an organization,
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person, and
- the historic practice of the institution with respect to similar information.

[51] However, not all of these will necessarily be relevant, and additional considerations may be relevant.³²

The county's representations

[52] The county submits that it exercised as much discretion as reasonably possible while protecting solicitor-client privilege, and disclosed as many records as it reasonably could. It states that this is evidenced by the revised index of records, which shows that only 20 records were not provided out of 194 discovered records.

The appellant's representations

[53] In response, the appellant submits that the interests of the appellant in obtaining the records outweighs the county's interests in its solicitor-client relationship. The appellant submits that the county is using that relationship to "shield the entirety of the records." The appellant submits that the county has failed to consider relevant factors involving the appellant's direct interest in having pertinent information about the project as it relates to his property. The appellant states that general records or records that

³⁰ Order MO-1573.

³¹ Section 43(2).

³² Orders P-344 and MO-1573.

pertain to third party property owners are not being sought. He further states that the objective of the initial letter was to obtain reasonable information relating to the engineer of record and project.

[54] The appellant also argues that fully withholding all the records at issue (including "standard information such as dates") raises a question about the county's appearance of transparency and accountability that it should want to avoid.

The parties' replies

[55] As mentioned, the parties were asked about whether the records contain personal information, and I am satisfied that the record do not contain the appellant's personal information.

[56] The appellant's sur-reply representations highlight the importance of his property interests. The appellant submits that his interests outweigh the county's interest with respect to its solicitor-client relationship. He submits that he has a compelling and direct interest in receiving the information in the records with respect to the county's project, as the project is in direct proximity to his property. He states that he is not seeking general records or records pertaining to third party property owners. He submits that the county has failed to factor in relevant considerations involving his direct interest in having pertinent information about the project as it relates to his property. Furthermore, the appellant submits that "shielding the entirety" of the records (including dates) raises a question with the county's appearance of transparency and accountability, that it should want to avoid.

Analysis/findings

[57] Having considered the parties' representations, the records themselves, and the revised index of records, I find the county's representations on the exercise of discretion to be persuasive, and the appellant's unpersuasive.

[58] I find that in denying access to the records, the county exercised its discretion under section 12. There is no evidence before me that it did so in bad faith or for an improper purpose, or taking into account any irrelevant considerations.

[59] I find that the county considered the purposes of the *Act* (including the principles that information should be available to the public and exemptions from the right of access should be limited), the specific the wording of section 12 and the interests it seeks to protect, and the nature of the information and the extent to which it is significant and/or sensitive to the county. In the circumstances, I find that the county considered all relevant factors in deciding to withhold records 10-20. These factors include the fact that the records do not contain the appellant's personal information, but do contain information in which he has an interest.

[60] Although the appellant essentially takes the position that the county

indiscriminately withheld relevant records under section 12, I note that the county has withheld only records 10-20 in full, but has disclosed 194 records.

[61] The appellant also asserts that the protection of the solicitor-client relationship is outweighed by his property interests. I disagree. In my view, the county recognized the appellant's interest in the records but gave more weight to its interest in maintaining solicitor-client privilege. The Supreme Court of Canada has stated the solicitor-client privilege is a privilege that must be maintained "as close to absolute as possible."³³ Accordingly, to the extent that the records contain any information relating to the appellant's property interests, the county was within its rights to safeguard information that is subject to solicitor-client privilege to withhold the records at issue.

[62] For these reasons, I uphold the county's exercise of discretion, and dismiss the appeal.

ORDER:

I uphold the county's decision and dismiss the appeal.

Original Signed By: _____

Marian Sami
Adjudicator

November 22, 2022 _____

³³ *Canada (Privacy Commissioner) v. Blood Tribe Department of Health*, 2008 SCC 44 (CanLII), [2008] 2 SCR 574, citing *R. v. McClure*, 2001 SCC 14 (CanLII), [2001] 1 SCR 445, at para. 35.