NOVA SCOTIA COURT OF APPEAL
Citation: *A.B. v. Griffiths*, 2009 NSCA 48

Date: 20090514
Docket: CA 296736
Registry: Halifax

Between:

A.B. and C.D. and Sixty (60) Other Individuals

Appellants

v.

Tom Griffiths and Nova Scotia Department of Education

Respondents

Judges:	Roscoe, Saunders, Oland, JJ.A.
Appeal Heard:	Wednesday, February 18, 2009, in Halifax, Nova Scotia
Held:	Appeal dismissed per reasons for judgment of Oland, J.A.; Roscoe and Saunders, JJ.A., concurring.
Counsel:	Rebecca Pitts and Jessica G. Chan, Articled Clerk, for the appellants
	Bettina Quistgaard for the respondent Tom Griffiths
	Agnes MacNeil (AGNS) for the respondent Nova Scotia Department of Education (Watching brief only)

Reasons for judgment:

[1] The appellants, A.B. and C.D. and 60 other individuals, are certified electricians. Their names appear on a list of persons who currently hold a certificate of qualification or apprenticeship under the *Apprenticeship and Trades Qualifications Act*, S.N.S. 2003, c. 1 ("ATQ Act"). That list, which is held by a provincial government department, contains over 4,000 names.

[2] By a decision dated June 11, 2007, Justice Arthur J. LeBlanc of the Nova Scotia Supreme Court directed disclosure of that list. His decision is reported as *Griffiths v. Nova Scotia (Education)*, 2007 NSSC 178. The appellants appeal his order dated May 1, 2008. For the reasons which follow, I would dismiss the appeal.

Background

[3] The International Brotherhood of Electrical Workers, Local 625 (the "IBEW") represents construction electricians and apprentices working in the unionized construction industry in mainland Nova Scotia. On December 11, 2003, Tom Griffiths, a member and business representative of the IBEW, asked the Department of Environment and Labour for the current list of the names of all persons in possession of certificates of qualification and of apprenticeship in the construction electrical trade in this province. His request was made pursuant to s. 6(1) of the *Freedom of Information and Protection of Privacy Act*, 1993, c. 5, s. 1 ("*FOIPOP Act*"). The Department of Education (the "Department"), to which custody and control of the list had been transferred, refused. It stated that the request concerned the release of personal information (*FOIPOP Act* s. 20).

[4] Mr. Griffiths then asked for a review by the Review Officer, who can review and make recommendations, but cannot make binding decisions (*FOIPOP Act* s. 39). On July 19, 2004 the Review Officer recommended disclosure. He determined that the information sought related to a discretionary licence or certificate and therefore should be disclosed (*FOIPOP Act* s. 20(4)(h)). Maintaining that disclosure of the list of names would be an unreasonable invasion of third party personal privacy, the Department declined to follow the Review Officer's recommendation.

[5] On September 14, 2004, Mr. Griffiths filed an appeal to the Supreme Court of Nova Scotia (*FOIPOP Act* s. 42(1)). On such appeals, the Supreme Court may determine the matter *de novo* (*FOIPOP Act* s. 42(1)(a)). The appeal was heard in complex Chambers on December 11, 2006. The Chambers judge ordered disclosure of the list to Mr. Griffiths. The order also provided that, if appealed, it would be stayed pending the final disposition of the appeal.

[6] The appellants are "third parties" (*FOIPOP Act* s. 41(4)) and were parties to the appeal to the Supreme Court. Within a month of the Chambers judge's order of May 1, 2008, they filed a notice of appeal.

The Legislation

[7] I begin with a summary of those provisions of the *FOIPOP Act* which are helpful in understanding the Chambers judge's decision and the issues raised by the parties on appeal.

[8] The full title of the *FOIPOP Act* is "An Act Respecting the Right of Access to Documents of Public Bodies in Nova Scotia and a Right of Privacy with Respect to Personal Information Held by Public Bodies in Nova Scotia". In *O'Connor v. Nova Scotia*, 2001 NSCA 132 , Saunders, J.A. writing for this court compared the *FOIPOP Act's* purposes to similar legislation in other jurisdictions and concluded:

> 56 ... the *FOIPOP Act* in Nova Scotia is the only statute in Canada declaring as its purpose an obligation both to ensure that public bodies are fully accountable and to provide for the disclosure of all government information subject only to "necessary exemptions that are limited and specific".
>
> 57 I conclude that the legislation in Nova Scotia is deliberately more generous to its citizens and is intended to give the public greater access to information than might otherwise be contemplated in the other provinces and territories in Canada. Nova Scotia's lawmakers clearly intended to provide for the disclosure of all government information (subject to certain limited and specific exemptions) in order to facilitate informed public participation in policy formulation; ensure fairness in government decision making; and permit the airing and reconciliation of divergent views. No other province or territory has gone so far in expressing such objectives.

[9] In the particular circumstances of the *O'Connor* decision, only two of the three purposes of the *FOIPOP Act* needed to be identified in its ¶ 56. The third purpose, which is relevant in this appeal, includes the protection of the privacy of individuals with respect to personal information about themselves held by public bodies (*FOIPOP Act* s. 2(c)).

[10] The *FOIPOP Act* stipulates that:

> 20(1) The head of a public body shall refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

The definition of "public body" includes government departments (*FOIPOP Act* s. 3(1)(j)). "Personal information" is defined as "recorded information about an identifiable individual," including the individual's name (*FOIPOP Act* s. 3(1)(i)).

[11] Subsection 20(2) provides that, in determining whether disclosure would be an unreasonable invasion of a third party's privacy, the head of a public body is to consider all relevant circumstances, including those listed in that subsection. Subsection 20(3) sets out circumstances when a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy. Subsection 20(4) sets out the opposite; that is, circumstances when a disclosure is presumed not to be such an invasion. In the course of my decision, these provisions will be set out in greater detail as appropriate.

[12] Also relevant is the burden of proof. In the circumstances of this case, the *FOIPOP Act* stipulates:

> 45(2) Where the record or part that the applicant is refused access to contains personal information about a third party, the burden is on the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.

The Decision of the Chambers Judge

[13] In his decision, the Chambers judge quoted the extract from *O'Connor* set out above. He then identified the analytical steps to be taken in deciding whether requested information should be disclosed:

> [19] In *Re House*, [2000] N.S.J. No 473 (S.C.), Moir J. discussed the process to be followed in assessing whether personal information should be released. He stated, at para. 6:
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> > ... I propose to consider this appeal in the following way:
> >
> > 1. Is the requested information "personal information" within s. 3(1)(i)? If not, that is the end. Otherwise, I must go on.
> >
> > 2. Are any of the conditions of s. 20(4) satisfied? If so, that is the end. Otherwise...
> >
> > 3. Is the personal information presumed to be an unreasonable invasion of privacy pursuant to s. 20(3)?
> >
> > 4. In light of any s. 20(3) presumption, and in light of the burden upon the appellant established by s. 45(2), does the balancing of all relevant circumstances, including those listed in s. 20(2), lead to the conclusion that disclosure would constitute an unreasonable invasion of privacy or not?

[14] The Chambers judge's determination of the first step, namely that the list of names requested constitutes personal information, is not under appeal. Nor is his determination under the second step that the certificates of qualification or of apprenticeship are not licences or discretionary benefits, and thus does not fall under the s. 20(4)(h) presumption which would permit disclosure.

[15] In the third step of *House (Re)* analysis, the Chambers judge considered whether disclosure would be a presumptive unreasonable invasion of privacy under s. 20(3) of the *FOIPOP Act.* That provision reads in part:

> 20 (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
>
> > ...
> >
> > (d) the personal information relates to employment or educational history;
> >
> > ...

> (i) the personal information consists of the third party's name together with the third party's address or telephone number and is to be used for mailing lists or solicitations by telephone or other means.

[16] The Chambers judge determined that disclosure of the list of names would be a presumptive unreasonable invasion of privacy under s. 20(3)(d) which refers to employment or educational history. However, it would not be under s. 20(3)(i) which refers personal information consisting of the third party's name and address or telephone number and is to be used for certain purposes.

[17] He reasoned:

> [38] The presumption of invasion of privacy was considered in *Dickie v. Nova Scotia (Department of Health)*, [1999] N.S.J. No. 116 (C.A.) and in *French v. Dalhousie University*, [2002] N.S.J. No. 139 (S.C.), where it was held that the phrase "relates to" is connected to the employment and educational history of the individual. Therefore, the disclosure of personal information which indicates a connection between employment or educational history is presumed to be an unreasonable invasion of a third party's personal privacy.
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> ...
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> [40] It can be argued that the requested information relates to educational history as mentioned in s. 20(3)(d). However, a list of names, with nothing else, would only disclose that the certificate holder meets a certain required criterion. It would not disclose whether the candidate or certificate holder had completed the training or whether they were working, or had worked, in the trade. Nonetheless, the provision only requires that the personal information relate to education or employment history. It does not matter if additional information is produced through the lists. Disclosure would therefore be a presumptive unreasonable invasion of third-party privacy pursuant to s. 20(3)(d).
>
> [41] The information requested does not contain telephone numbers or addresses and does not, on first impression, appear to provide a basis for solicitation. The appellant could, of course, try to match the names with telephone numbers and addresses, but there is no evidence this is likely. There is no evidence to establish that Mr. Griffiths or the IBEW intend to solicit. The third parties rely only on information they have collected from the IBEW website. Thus, in contrast to s. 20(3)(d), I am not satisfied that s. 20(3)(i) provides a basis to find a presumptive unreasonable invasion of privacy.

[18] Having found that disclosure would be a presumptive unreasonable invasion of privacy because the personal information relates to education or employment history, the Chambers judge then considered the fourth step of the analysis from *House (Re)* which reads:

> 4. In light of any s. 20(3) presumption, and in light of the burden upon the appellant established by s. 45(2), does the balancing of all relevant circumstances, including those listed in s. 20(2), lead to the conclusion that disclosure would constitute an unreasonable invasion of privacy or not?

[19] Section 20(2) reads:

> 20(2) In determining ... whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body shall consider all the relevant circumstances, including whether
>
> (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Nova Scotia or a public body to public scrutiny;
>
> (b) the disclosure is likely to promote public health and safety or to promote the protection of the environment;
>
> (c) the personal information is relevant to a fair determination of the applicant's rights;
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> (d) the disclosure will assist in researching the claims, disputes or grievances of aboriginal people;
>
> (e) the third party will be exposed unfairly to financial or other harm;
>
> (f) the personal information has been supplied in confidence;
>
> (g) the personal information is likely to be inaccurate or unreliable; and
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> (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant. (Emphasis added)

[20] The Chambers judge concluded:

> [50] ... I am unable to agree that releasing the names would be an unreasonable invasion of privacy because the names were not supplied in confidence. Individuals who obtain degrees or certificates do not do so on the basis that they expect to (sic) their names will be confidential upon completion of their study or apprenticeship. It goes without saying that graduates' lists are found in public records, such as local newspapers.
>
> [51] I am mindful of the allegation that the IBEW intends to use the list for recruitment purposes. However, Mr. Griffiths was not cross-examined on his affidavit and I have no direct evidence that the purpose of the application is to serve that purpose.

He held that, in the circumstances, disclosure would not constitute an unreasonable invasion of privacy and ordered disclosure.

Issues

[21] The issues on this appeal are:

1. whether the Chambers judge erred in holding that the personal information was not supplied in confidence;

2. whether he erred in holding that Mr. Griffiths had satisfied the burden of proving that the disclosure of the personal information would not be an unreasonable invasion of a third party's personal privacy; and

3. whether he erred in determining that the personal information relates to employment or educational history.

Standard of Review

[22] In *O'Connor* this court addressed the standard of review on an appeal from a de novo determination by the Nova Scotia Supreme Court pursuant to the *FOIPOP Act.* After reviewing relevant legislation and applicable principles, Saunders, J.A. concluded:

> 34. ... the standard of review under the FOIPOP Act of a lower court's findings of fact should be the same as in other civil cases, that is obvious, palpable and

> overriding error. In matters of law, for example conclusions with respect to the interpretation to be given to legislation, the test is one of correctness.

[23] In *McPhee v. Canadian Union of Public Employees*, 2008 NSCA 104, Cromwell, J.A. as he then was, writing for the Court, said the following regarding the standard of "palpable and overriding error" with respect to questions of fact:

> [18] Appellate intervention on questions of fact is permitted only if the trial judge is shown to have made a "palpable and overriding error": see, e.g., *Housen, supra* at para. 10. Sometimes the standard has been expressed in different words, such as "clear and determinative error", "clearly wrong" and "hav[ing] affected the result." (emphasis added): see, e.g., *H.L. v. Canada (Attorney General)*, [2005] 1 S.C.R. 401 at para. 55; *Delgamuukw v. British Columbia*, *supra* at paras. 78 and 88. However expressed, courts of appeal must accept a trial judge's findings of fact unless the judge is shown to have made factual errors that are clear and which affected the result.
>
> [19] This deferential approach on appeal applies to all of the trial judge's findings of fact, whether or not based on the judge's assessment of witness credibility and whether based on direct proof or on inferences which the judge drew from the evidence: see, e.g. *Housen, supra* at paras. 10-25; *H.L.*, *supra* at para. 54.
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> [20] This deferential approach also applies to the judge's findings which apply the law to the facts – that is, to questions of mixed law and fact – unless the finding can be traced to a legal error: *Housen*, *supra* at paras. 26-37.
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> …
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> [23] Not every error in findings of fact permits appellate intervention. As Lamer, C.J.C. said in *Delgamuukw, supra* at para. 88:
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> > … it is important to understand that even when a trial judge has erred in making a finding of fact, appellate intervention does not proceed automatically. **The error must be sufficiently serious that it was "overriding and determinative in the assessment of the balance of probabilities with respect to that factual issue".** (emphasis added)

Analysis

Confidentiality

[24] The appellants submit that the Chambers judge had no evidence before him to substantiate his reasons for finding that the names on the list of persons in possession of certificates of qualification and of apprenticeship in the construction electrical trade in this province were not supplied in confidence. Further, they submit that he had evidence to the contrary. The appellants also say that there was nothing to support his statements (Reasons, ¶ 50) that individuals who obtain certificates of qualification in the construction electrician trade do not expect that their names will be confidential on completion of their study or apprenticeship, or that lists of those persons are found in the public records, such as local newspapers.

[25] As evidence to the contrary, the appellants rely on the affidavit deposed by Marjorie Davison who is employed by the Department of Education as Director of Apprenticeship Training and Skill Development. In my view, the Davison affidavit does not assist the appellants. Its critical paragraph reads:

> 16. The DOE has a custom and past practice of disclosing, in response to an inquiry about a specific named individual, whether or not that named individual is in possession of a current certificate of qualification in a trade. This custom and past practice addresses the need for accountability and public safety in relation to the nine compulsory trades. The DOE does not and has not provided lists of names of certified individuals as a public service nor does it voluntarily disseminate information on certified trades persons with a view to providing assurance of competence and quality. The DOE has not in the past provided any person the information sought by the Appellant in this case whether by way of a list of names or whether by individual names.

[26] The Davison affidavit makes it clear that the Department considered the list of names and the names of the individuals on it confidential and treated them as such. However, s. 20(2) of the *FOIPOP Act* refers to personal information that "has been supplied in confidence." The fact that the Department, the depository of the names, treated that information as confidential is insufficient. The persons who supplied the names were the individuals who obtained a certificate of qualification under the *Apprenticeship and Trades Qualifications Act*, S.N.S. 2003, c. 1. There was no evidence before the Chambers judge from any such person or persons that they supplied their names in confidence or that they had a reasonable expectation

of privacy with respect to their names or status as certificate holders. Accordingly, the Chambers judge did not err in determining that the names were not supplied in confidence.

[27] Moreover, the Department's existing practice of disclosing this information on a case-by-case basis is contrary to any claim of confidentiality. There was no evidence that any of the persons whose name appeared on the list objected to the Department responding, when asked by a member of the public, whether he or she holds a certificate of qualification. Rather than demonstrating that it keeps the names confidential, the Davidson affidavit shows that the Department already and routinely discloses the identity of certificate holders to members of the public.

[28] The jurisprudence on privacy legislation supports the argument that disclosure of a list of names such as that which is the subject of this appeal is not confidential. For example, *Noel v. Great Lakes Pilotage Authority Ltd.*, [1987] F.C.J. No. 947 (Q.L.) (F.C.T.D.) concerned an application under the federal *Access to Information Act*. The Federal Court ordered disclosure of a list of names of masters and deck officers who came within a certain exemption set out in the regulations under the *Pilotage Act*.

[29] In *Order 02-45; British Columbia (Justice Institute)*, [2002] B.C.I.P.C.D. No. 45 (Q.L.), an application had been made under the *Freedom of Information and Protection of Privacy Act* for the names of the individuals who assess student performance. The Justice Institute refused to disclose those names, although it provided information such as pass/failure rates. Among other things, it argued that the names were confidential. The British Columbia Information and Privacy Commission determined that, on the particular facts of that case, there was no presumption of an unreasonable invasion of personal privacy, and that none of the relevant circumstances identified in the legislation favoured withholding of the information. In concluding that disclosure of their names would not unreasonably invade the personal privacy of the assessors, the Commission stated:

> 33 ... There is another consideration - the nature of the information. The names of the assessors are undoubtedly their personal information, but when it comes to one's name context is important. In the absence of any presumed unreasonable invasion of personal privacy under s. 22(3), and in light of the nature of the information already disclosed to the applicant, the assessor's names are hardly sensitive personal information. Nor do I think that the complete set of information

> would unreasonably invade their personal privacy. Even if one assumes only for the purposes of argument, that the complete set of information is personal information of the assessors, it is hardly sensitive or stigmatizing information or information of a kind that is, by its nature, ordinarily confidential. I do not consider that disclosure of the disputed information would, in this case, be an unreasonable invasion of personal privacy under s. 22(1) and find that s. 22(1) does not require the Justice Institute to withhold the information.

[30] In *Order PO-2025; Ministry of Finance*, [2002] O.I.P.C. No. 97 (Q.L.), the request for access was made under the *Freedom of Information and Protection of Privacy Act*. The Ontario Information and Privacy Commissioner ordered disclosure of a list of the names of registered mortgage agents together with the affiliated mortgage brokers held pursuant to the *Mortgage Brokers Act*, in the Ministry of Finance's database. He found that the information was not confidential in nature and that the names were not supplied with a reasonably-held expectation of implicit confidentiality.

[31] Here the Chambers judge found (Reasons, ¶ 50) that the names of certified construction electricians on the list were not supplied in confidence. As the appellants point out, his statements which immediately followed regarding the expectations of the individuals concerned and graduate lists being found in public records such as local newspapers were not in evidence before him. The only evidence on confidentiality was the Davison affidavit which I have reviewed earlier. The Department already discloses the names on a case by case basis in response to public inquiries. Those names, and their appearance on the list in the possession of the Department, are not sensitive or stigmatizing information. Their disclosure would not unfairly damage the reputation of any of those persons. Nor are the names information of a kind that is ordinarily confidential. There appears to be no reason of substance why the identity of persons in possession of certificates of qualification and of apprenticeship in the construction electrical trade should not be accessible to the public.

[32] For these reasons, it is my view that the Chambers judge did not err in finding that the information sought to be disclosed had not been "supplied in confidence".

Employment or Educational History

[33] Disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information “relates to employment or educational history” (*FOIPOP Act* s. 20(3)(d)). The Chambers judge found that the list of the names related to employment or educational history (Reasons, ¶ 40). In my respectful opinion, he erred in his interpretation of that provision.

[34] The meaning of “employment history” in s. 20(3)(d) was discussed by this court in *Dickie v. Nova Scotia (Department of Health)*, [1999] N.S.J. No. 116 (N.S.C.A.):

> [45] The term "employment history" is not defined in the *Act*, but both the words themselves and the context in which they are used suggest that the ordinary meaning of the words in the employment context is intended. In the employment context, employment history is used as a broad and general term to cover an individual's work record. As Commissioner Flaherty put it in Order No. 41-1995; *British Columbia (Minister of Social Services)*, [1995] B.C.I.P.C.D. No. 14:
>
> > I agree ... that employment history includes information about an individual's work record. I emphasize the word "record" because in my view this incorporates significant information about an employee's performance and duties. (at p. 6)
>
> [46] Section 20(3)(d) emphasizes the generality of the expression by speaking not simply of personal information which is employment history, but of personal information which "relates to" employment history. The importance of privacy in this area is further underlined by the specific prohibition of disclosure respecting labour relations matters in s. 21(1) and by the much more confined entitlement to information relating to the "position, functions or remuneration as an officer ... of a public body ..." in s. 20(4). (Emphasis added)

[35] *Canada (Information Commissioner) v. Canada (Commissioner of the Royal Canadian Mounted Police)*, [2003] S.C.J. No. 7 (S.C.C.) is also relevant. There the Supreme Court of Canada considered the meaning of “employment history” under the federal *Privacy Act* which defines “personal information” as including information relating to the employment history of the individual. The Court stated as follows:

> [25] ... The ordinary meaning of "employment history" includes not only the list of positions previously held, places of employment, tasks performed and so on, but also, for example, any personal evaluations an employee might have received during his career. Such a broad definition is also consistent with the meaning generally given to that expression in the workplace.

[36] In order to be found to be employment or educational history, the information must do more than simply have some sort of link to employment or education. The words “employment and educational” are not nouns, but adjectives which describe the word “history”. The presumption against disclosure will only arise if the information relates to “employment or educational history” in the fuller sense set out in the jurisprudence.

[37] Here the requested information consisted of the list of certified construction electricians. The only particulars on that list were the names of individuals with certificates of qualification or of apprenticeship. No information as to an individual’s work record, performance and duties, previous employers, and the like as described in *Dickie* or *Canada (Information Commissioner)* is available from the list. The principles developed in the jurisprudence relating to employment history would also apply to educational history. Here, no information as to an individual’s educational background, such as schools attended, courses, discipline, and assessments can be gleaned from the list of names.

[38] The list does no more than name the individuals who can lawfully work in the construction electrical trade in Nova Scotia at a certain time. By finding that it constituted “employment or educational history” within the meaning of s. 20(3)(d) of the *FOIPOP Act*, the Chambers judge erred.

[39] This was the only basis on which the Chambers judge had found that there was a presumptive unreasonable invasion of privacy pursuant to the *FOIPOP Act.* As a result of his error in interpretation, no such presumption applies. As will be seen, this has an impact on the last issue in this appeal which I consider below.

All the Relevant Circumstances

[40] According to the appellants, the Chambers judge erred in holding that Mr. Griffiths, upon whom the burden of proof rested (*FOIPOP Act* s. 45(2)), had satisfied the burden of proving that the disclosure of the personal information

would not be an unreasonable invasion of a third party's privacy. They also say that his reliance on the confidentiality factor, only one of those listed in s. 20(2), was insufficient for this conclusion and, further, that he failed to consider all relevant circumstances, which includes more than those identified in s. 20(2).

[41] It is useful to here reiterate the fourth and final step in the *House (Re)* analysis:

> 4. In light of any s. 20(3) presumption, and in light of the burden upon the appellant established by s. 45(2), does the balancing of all relevant circumstances, including those listed in s. 20(2), lead to the conclusion that disclosure would constitute an unreasonable invasion of privacy or not?

[42] In his analysis, the Chambers judge took into account his finding of a rebuttable presumption and the burden of proof on Mr. Griffiths pursuant to s. 45(2). At this point it should be remembered that the Chambers judge having erred in his interpretation of "employment and educational history" in s. 20(3)(d), there is no presumption that the disclosure sought would unreasonably invade the privacy of the individuals whose names appear on the list in the Department's custody. When such a presumption applies, the s. 20(2) analysis or balancing exercise begins with a weighted presumption that disclosure would unreasonably invade the privacy of the third persons: see *Doctors Nova Scotia v. Nova Scotia (Department of Health),* 2006 NSCA 59 at ¶36. That is not the situation here.

[43] The Chambers judge did not accept (Reasons, ¶49) that disclosure would ensure that the *ATQ Act* and its regulations would be complied with, a submission which related to whether disclosure would likely promote health and safety (s. 20(2)(b)). He considered whether the information had been supplied in confidence (s. 20(2)(f)) and properly found that it had not. In his decision he pointed out that the practice of the Department is to disclose the identity of certificate holders to members of the public on a case-by-case basis. He had no evidence that the appellants had any reasonable expectation of privacy with respect to their names or status as certificate holders. All these factors the Chambers judge took into account in his s. 20(4) analysis.

[44] Section 20(2) calls for a consideration of *all relevant circumstances*, not just those listed in that provision. In *House (Re)*, a private investigator requested the name and address of the registered owner of a motor vehicle for which he had the

vehicle plate number. In his analysis of s. 20(4) and his weighing of all relevant circumstances, Moir, J. identified several subjects for consideration in the assessment of disclosure and privacy, including:

> - the possible uses and misuses of the information sought;
>
> - the reason the information is sought in distinction from the public purpose of the *FOIPOP Act*;
>
> - the extent to which the public body keeps the information confidential or releases it; and
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> - any reasonable expectation of privacy on the part of the third party.

[45] The appellants urge that the list of names could be used for improper purposes. They submit that it would not be difficult for an applicant who is provided with such a list to find full contact information for each person on it, which would permit unsolicited contact by mail, telephone or other means. The Chambers judge heard and addressed this argument:

> [51] I am mindful of the allegation that the IBEW intends to use the list for recruitment purposes. However, Mr. Griffiths was not cross-examined on his affidavit and I have no direct evidence that the purpose of the application is to serve that purpose.

See also his Reasons, ¶ 41 where he stated that there was no evidence that Mr. Griffiths or the IBEW intend to solicit. The record supports his statements that there was nothing which suggested that any improper use would be made of the information. While, as indicated in *House (Re)*, possible misuses of information is a relevant factor to consider, a bare assertion of possible misuses is insufficient. Moreover, the *FOIPOP Act* does not prohibit the disclosure of a list of names *per se*. It is only when the names are accompanied by certain contact information that is to be used by for solicitation that the s. 20(3)(i) rebuttable presumption of an unseasonable invasion of personal privacy arises.

[46] The appellants also submit that the disclosure of the information would not advance the public purposes of the *FOIPOP Act*. However, nothing in that legislation requires an applicant to do so.

[47] As explained earlier in this decision, the other additional relevant circumstances described in *House (Re)*, namely the extent to which the public body keeps the information confidential or releases it and any reasonable expectation of privacy on the part of the third party, were considered by the Chambers judge.

[48] In summary, the Chambers judge committed no reviewable error in balancing all of the relevant considerations and in finding that, in this case, the balance is in favour of disclosure.

Disposition

[49] I would dismiss the appeal and award Mr. Griffiths costs in the amount of $1,500.00 together with disbursements as agreed or taxed.

Oland, J.A.

Concurred in:

Roscoe, J.A.

Saunders, J.A.