*Wyness* v. *NWT Power Corporation*, 2009 NWTSC 45

Date: 2009 07 13
Docket: S-0001-CV-2007000126

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

BARBARA WYNESS and the UNION OF NORTHERN WORKERS
Appellants

- and -

NORTHWEST TERRITORIES POWER CORPORATION
Respondent

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An appeal brought pursuant to the *Access to Information and Protection of Privacy Act*, S.N.W.T. 1994, c.20. Appeal dismissed.

Heard at Yellowknife, NT, on June 26, 2009.

Reasons filed: July 13, 2009.

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REASONS FOR JUDGMENT OF THE HONOURABLE JUSTICE J.Z. VERTES

Counsel for the Appellants: Austin F. Marshall

Counsel for the Respondent: Glenn D. Tait

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REASONS FOR JUDGMENT

[1] This is an appeal brought pursuant to the *Access to Information and Protection of Privacy Act*, S.N.W.T. 1994, c.20 (the "Act").

[2] The appellant union is the certified bargaining agent for the bargaining-unit employees of the respondent, Northwest Territories Power Corporation. The personal appellant, Ms. Barbara Wyness, is the research officer of the union. On April 5, 2006, Ms. Wyness filed a request for access to information concerning the number of non-bargaining unit employees of the corporation who received bonuses, paid over and beyond their salaries, in 2004 and 2005, and the rationale for those bonuses. On May 27, 2006, the corporation's president responded as follows:

> Annual payments for non-bargaining unit employees were established for a number of purposes including the retention of management staff, to focus employees on corporate objectives, foster team work and provide some remuneration for extra hours worked without compensation. The payments are comprised of two main components, an individual component based on the achievement of objectives set for each position and a corporate component based on the achievement of the budgeted net income target (based on GRA approved return on equity) and performance indicator targets. Performance indicator

> targets include: System Availability, Safety, Debt/Equity Ration, Plant Efficiency, Operating Cost Per kW.h Generated, Customer Service Rating, Staff Turnover, Litres of Hazardous Material spilled, MWH Generated per average number of budgeted positions and employee satisfaction.
>
> In fiscal 2004 and 2005 there were a total of 41 non bargaining unit employees. Payments under the plan totaled $560,000 in 2004 and $547,300 in 2005.

[3] The bonuses in question are more commonly referred to as "at-risk compensation" which, according to the corporation's personnel policies, is made available to its senior and mid-level managers and those employees excluded from the bargaining unit. This compensation is in addition to each employee's base salary. It functions as an incentive payment based on, as will be explained later, the achievement of corporate and personal objectives.

[4] On July 6, 2006, the appellants (through their solicitors) wrote to the Information and Privacy Commissioner (the "Commissioner") complaining that the corporation's response did not fully answer the request. They sought more details including a breakdown of the payments on an individual basis together with the rationale for each payment. The Commissioner in turn wrote to the corporation to see if further information would be forthcoming. The corporation responded by giving an overview of the at-risk compensation scheme but refused to provide the detailed information sought. It was the corporation's position that such information was non-disclosable since it was personal information respecting employees' incomes and thus disclosing it would be, by terms of the Act, an unreasonable invasion of those employees' personal privacy.

[5] The Commissioner subsequently issued a report concluding, in essence, that the information sought relates to a discretionary benefit, as that term is used in the Act, and therefore its disclosure would not be an unreasonable invasion of the personal privacy of the individuals affected. She recommended disclosure of the specific information sought by the appellants, subject only to non-disclosure of what is termed the "personal" component of the compensation formula.

[6] The corporation responded by restating its position that disclosure of the specific information sought would constitute an unreasonable invasion of privacy since it would reveal details of employees' incomes and personnel evaluations (both

of which are protected by the Act). It therefore refused to divulge further information.

[7] As a result, the appellants launched this appeal. The crux of the case, according to the appellants, is whether the at-risk compensation constitutes a discretionary benefit. If it does, the information sought must be disclosed.

[8] For the reasons that follow, I have concluded that these payments are not discretionary benefits. They are payments that the corporation is contractually bound to make as part of each non-union employee's compensation package. While there are certain discretionary elements contained within the formula for calculating the payments, the scheme is part of a comprehensive compensation package. The appeal must therefore be dismissed.

Legislation:

[9] The Act, much like similar statutes in other Canadian jurisdictions, combines rights of access to government records and measures to protect personal privacy. Its broad purpose with respect to access is to provide a right of access to information in records under the control of public bodies in accordance with the principle that exceptions to that right should be limited and specific: see s. 1(a) and (c).

[10] The respondent corporation is not government, but it is, by virtue of its enacting statute, an agent of the Government of the Northwest Territories: *Northwest Territories Power Corporation Act*, R.S.N.W.T. 1988, c.N-2. It has been designated as a "public body" for purposes of the Act: *Access to Information and Protection of Privacy Regulations*, R-206-96.

[11] The Act stipulates a presumptive right of access subject, however, to certain exceptions. An important category of exceptions is personal information, defined as "information about an identifiable individual", the disclosure of which would be an unreasonable invasion of that individual's personal privacy. The Act sets out certain presumptions which remove any discretion on the part of the public body when considering whether to disclose documents containing personal information.

[12] Sub-section 23(2) of the Act stipulates that the disclosure of certain types of personal information is presumed to be an unreasonable invasion of an individual's personal privacy. These include information relating to employment, occupational or educational history, income, and evaluations, character references or personnel evaluations. Sub-section 23(4), on the other hand, states that the disclosure of certain types of information does not constitute an unreasonable invasion of privacy. These include, for the purposes of this appeal, clause (e): "the third party's classification, salary range, discretionary benefits or employment responsibilities"; and, clause (h): "details of a discretionary benefit of a financial nature granted to the third party".

[13] As I observed in a previous case dealing with these parts of the Act, when addressing a request for access to what may be personal information, there must first be a determination as to whether the information is indeed "personal information" within the meaning of the Act. If it is, then there must be a determination as to whether it is the type of information the disclosure of which is presumed to be an unreasonable invasion of privacy. If the presumption in ss. 23(2) comes into play, then it may be rebutted only by one of the criteria set out in ss. 23(4) deeming disclosure of certain types of information to not be an unreasonable invasion of privacy: *Canadian Broadcasting Corporation & Green* v. *Northwest Territories*, [2006] N.W.T.J. No. 42 (S.C.), at para. 15.

[14] The Act also states, in between these two presumptions, that, in determining whether a disclosure of personal information constitutes an unreasonable invasion of privacy, the head of the public body must consider all of the relevant circumstances, including, among others, whether the disclosure is desirable for the purpose of subjecting the public body's activities to public scrutiny: ss. 23(3). But, these considerations come into play only if the presumption in s. 23(2) does not apply.

[15] There is nothing in the Act to suggest that the right to access trumps the right to privacy, or vise versa. On the contrary, the twin purposes of the Act are stated to be "to make public bodies more accountable to the public" and "to protect personal privacy". The Act attempts to achieve a balance between these two competing values. It is only where disclosure is sought of personal information that the Act signals the paramountcy of the value of privacy if the disclosure would

be an unreasonable invasion of privacy. In such case the Act mandates that the information not be disclosed: see ss. 23(1).

[16] The Act sets out a comprehensive scheme for dealing with access requests. An applicant puts the request first to the public body in question. The head of the public body must respond in a timely manner. An applicant who is refused access may ask for a review by the Information and Privacy Commissioner. The Commissioner, after reviewing the request and reasons for refusal, issues a report containing recommendations as to whether access should be granted, and how, or whether access should be denied. The Commissioner is not empowered to order disclosure. The head of the public body, upon receiving the Commissioner's report, may follow the recommendations or make any other decision the head considers appropriate: s. 49.6.

[17] The Act goes on to provide a right of appeal to this court from the decision of the head of the public body. The court has a wide appellate power. The Act states that the court "shall make its own determination of the matter": s. 38(1). The determination for the court, in essence, is whether the Act requires the public body to give access or requires the public body to refuse access.

[18] Since this is an appeal from a statutory decision-maker, i.e., the head of the public body in question, it is necessary to identify the standard of review. Previous cases from this court, dealing with similar issues, have established that the standard of review is one of correctness: *Canadian Broadcasting Corporation* (above), at para. 25; *Dhont* v. *Northwest Territories*, [2008] N.W.T.J. No. 39 (S.C.), at para. 7. Counsel agree that correctness is the appropriate standard.

[19] The Act stipulates that, on a review of a decision to refuse access to a record that contains personal information, the onus is on the applicant to establish that disclosure would not be contrary to the Act: s. 33(2). This also applies on appeals to this court: s. 38(2).

[20] A third party, whose interests and privacy may be at stake in any access request, is entitled to be given notice of any such request: s. 26(1). In this case, notice was given to the affected employees. Thirty employees identified themselves to the court as objecting to the appeal. Pursuant to a pre-trial case management directive, copies of the briefs filed by counsel for the parties were

distributed to these individuals along with an invitation to respond. Twenty-eight responses were received. All were opposed to release of the information sought by the appellants. None of these individuals, however, sought standing for the hearing.

[21] At the start of the hearing before me, appellants' counsel requested me to strike the written responses received from the twenty-eight employees. His concern was that these responses contained evidence and argument that cannot be tested. I refused to strike them from the record, however, since they were submitted in response to the invitation agreed to by counsel during case management. In any event, most of the assertions contained in the responses echoed the respondent's arguments on this appeal. There was no point of substance that affected my decision in this case. I ignored all assertions of fact in them since they were not in evidentiary form. It is enough, however, to record the objections of these affected individuals.

[22] On appeal, the court may examine in private the records under consideration: s. 38(1). In this case, counsel filed all of the pertinent information under seal. In addition, respondent's counsel provided the same information to appellants' counsel upon that counsel's undertaking to keep the information received confidential. This was a commendable step since it enabled both counsel to put full submissions before the court based on complete knowledge of what was at stake.

Scope of the Appeal:

[23] It is worthwhile to note exactly what is being sought. The original request sought the following information:

> The number of non-bargaining unit employees and total amount of bonuses paid to them above their normal salary for fiscal year 2004 and 2005 for the NWT Power Corp and the rationale for the payment of bonuses.

[24] The corporation responded (as quoted previously) by providing (i) the number of employees: 41; (ii) the total amounts paid in 2004 and 2005: $560,000 and $547,300 respectively; and (iii) the "rationale for the payment of bonuses": retention, focus on corporate objectives, foster team work, and provide remuneration for unpaid overtime. The corporation also provided the formula on

which they are based: a "personal" component based on the achievement of individual objectives and a "corporate" component based on the achievement of various performance targets including net income. So, it could be argued that the information sought was provided.

[25] However, when the matter was referred to the Commissioner, the appellants amplified their request by specifying that what they sought was "a breakdown of the bonuses paid on an individual basis, together with the rationale for each such payment". It was on that basis that the Commissioner proceeded with her review. The appellants' Notice of Appeal referred to the respondent's refusal to follow the Commissioner's recommendations and its refusal to release the information sought. In its brief, however, the respondent expanded its request once more to include disclosure of a document entitled "Senior Managers & Excluded Employees' Handbook" as well as extracts from individual employment agreements. The respondent objected to this continuing expansion of the request.

[26] I have concluded that this appeal should be restricted to the information sought by the appellants before the Commissioner. That was the request addressed by the Commissioner as well as the head of the respondent when he made the decision now under appeal. It does not help the orderly administration of the Act to allow an applicant to expand or alter the request being put forward as the matter proceeds through the review process. The Act requires an applicant to provide details so as to identify the information sought: s.6(2). The applicant may ask the Commissioner to review a decision made in response to the request: s. 28(1). Nothing in the Act creates a free-standing right to make a new or different request to the Commissioner. Similarly there is nothing in the Act that creates a right to add a new request to an appeal. There has to be some definition to the request. And that comes primarily from the original request for access.

[27] Therefore, I will address the request as being for a breakdown of the at-risk compensation paid to each employee, on an individual basis, and the rationale for each.

Analysis:

[28] As I previously noted, the central question is whether the at-risk compensation paid to the corporation's non-union employees can be classified as

"discretionary benefits", the release of which would not result in an unreasonable invasion of privacy, as per ss. 23(4) of the Act. The respondent conceded that if it is a discretionary benefit, then the information is disclosable.

[29] The parties agreed that what is being sought constitutes "personal information". Appellants' counsel argued that there was a way to edit the information which would take it out of the category of "personal information". I will address that later in these reasons. For now I will concentrate on the central question.

[30] It is important to set out exactly how the respondent's at-risk compensation plan operates. This is made easier since, during the course of the review before the Commissioner, two documents relating to how the at-risk compensation plan works were released.

[31] There are three levels of employees eligible for at-risk compensation: (a) the president and chief operating officer; (b) senior management; and (c) a middle management and excluded group. The president and the senior managers have individual employment contracts. In each there is a reference to eligibility or entitlement to participate in the corporation's at-risk compensation plan. The rest do not have individual contracts. Their terms of employment are contained in the aforementioned "Handbook". Their eligibility for at-risk compensation depends on exclusion from the bargaining unit and being on staff for a minimum period of time as of a certain date each year.

[32] The at-risk compensation plans operate in the same way for all employees. The major difference is with respect to the percentage of base salary that an individual is entitled to receive in addition to that base and who approves the payments. The president is eligible to receive up to 40% of base salary; 20% for senior managers; and 10% for middle managers and other excluded employees. These amounts may be exceeded if the corporation exceeds its target income but they are ordinarily referred to as the maximum potential compensation.

[33] The compensation consists of two components: a corporate component which accounts for 75% of the potential compensation and a personal component which accounts for 25%.

[34] The corporate component is based mainly on the achievement of income targets set by the corporation's board of directors. Should those targets not be met, reductions will be applied to this component. Should the targets be exceeded, the component will be adjusted upwards. The plans set out a specific formula for these adjustments.

[35] The other aspect of the corporate component consists of an adjustment based on various corporate performance indicators. This may result in an increase or decrease in the corporate component. This is a decision within the discretion of the board's Governance and Compensation Committee (in the case of the president and other senior managers) or the president (in the case of middle managers and other excluded employees).

[36] The personal component is based on the individual employee's achievement of objectives set for the year. Those are established by the Committee for the president. These then serve to set the objectives for the other senior managers. The Committee will evaluate the president and decide on the compensation to be allocated under this component. The president in turn does likewise for the other senior managers but his decision must ultimately be approved by the Committee. For other eligible employees, the applicable manager sets the objectives, evaluates the employee's performance, and makes a recommendation to the president on the amount of compensation to be allocated.

[37] The corporation does not set aside a specific amount each year for at-risk compensation. It merely undertakes to provide the amount required to meet the payments allocated by the at-risk compensation plans.

[38] There can be no dispute that the information sought is personal information the disclosure of which is presumed by s. 23(2) of the Act to be an unreasonable invasion of the affected employees' personal privacy. It describes a third party's income (ss. 23 (2)(f) of the Act) and it inferentially contains evaluations of the third party and personnel evaluations (ss. 23(2)(g) of the Act). Knowing the applicable percentages of base salary and the amount would enable someone to calculate the individual's salary. Knowing the amount awarded under the personal component would enable someone to discern the evaluation of that employee's performance. It would be merely a mathematical exercise to ascertain this type of protected

information should the information sought by the appellants, in the detailed form maintained by the corporation, be released.

[39] As can be seen, there are several "discretionary" aspects to the plan. There is, first, the determination by the board's Governance and Compensation Committee of the amount to be allocated (by an increase or a decrease) to the corporate component based upon the achievement of corporate performance indicators (other than the income target). Then there is the individual performance evaluation used to arrive at the personal component. There is a further discretionary factor. Every employee who is otherwise eligible for at-risk compensation may be denied compensation if the president considers his or her performance unsatisfactory.

[40] It is these aspects of the at-risk compensation plan that led the appellants to argue that it is a discretionary benefit. This was also the conclusion drawn by the Commissioner in her report where she wrote (at p. 7):

> In my opinion, the language used in all of the documents which refer to the bonus program is permissive rather than mandatory in nature. There is no guarantee that a bonus will be paid in any year. There is a large amount of discretion placed in the hands of Directors and then in the President based on evaluation of job performance for each individual employee. The bonus paid may differ from employee to employee both in terms of percentage of total salary and in terms of actual amount paid. On the corporate side, the President is, again, given discretion as to how much will be paid out by way of bonus in each year and, although it is to be grounded in certain objective criteria, performance measures and methods of calculation, once that basic calculation is done, the President continues to have discretion to adjust the amount, either upwards or downwards. In my opinion, just because these bonuses become part of income when paid, does not take them out of the realm of discretionary. Furthermore ... the bonuses are not established by means of a "precise calculation". There is no exact mathematical calculation which the employee could use to estimate his or her annual bonus. Too much is left to discretion of the Directors and/or the President.

[41] In this extract the Commissioner refers to the language being used in the documents referring to at-risk compensation as being "permissive" rather than "mandatory". But, in the employment agreements for the senior managers, there is an express reference to the at-risk compensation being "a part of the employee's

total salary". The Handbook and the president's employment agreement speak of "eligibility" for at-risk compensation but, at least in the Handbook, the eligibility criteria are expressly set out (as they are in both of the "At-Risk Compensation Plan" documents). These provisions imply to me a more binding commitment than the "permissive" and non-binding interpretation put on them by the Commissioner.

[42] Further, the fact that the amount paid may differ from employee to employee does not make the payments any more discretionary than otherwise. Neither does the fact that an employee may not be able to estimate his or her bonus in any given year. That is inherent in these types of compensation plans. Part of the aim is to reward employees on the basis of corporate performance, something that can only be assessed after the fact.

[43] The more pertinent question, in my respectful view, is whether the corporation is obligated to make these payments (provided that an employee is otherwise eligible).

[44] In the previously-referenced *Canadian Broadcasting Corporation* I had occasion to consider what the Act means by a "discretionary benefit". There I noted (at para. 35) that the term suggests a benefit which the employer may confer in his or her discretion, unfettered by any requirement to do so. In that case I was asked to consider disclosure of a severance agreement. I held there that, even though the agreement was one negotiated by the parties, it was based on a pre-existing employment agreement. Therefore I held the payment to be a contractual obligation as opposed to a discretionary benefit.

[45] In that case I also drew a distinction with the case of *Van Den Bergh* v. *Canada*, [2003] F.C.J. No. 1407 (T.D.), a decision of the Federal Court which provided a good example of a discretionary benefit. In *Van Den Bergh* an access request sought disclosure of names of employees who had received performance bonuses. The bonuses had been conceived by the employer as a way of rewarding hard-working and talented employees. There was no obligation on the employer to establish a bonus plan or to pay the bonus. The employer's managers determined the amount to be paid, if any, to each employee. The criteria used varied in different sectors of the workplace since individual managers established their own guidelines. The court concluded that the entire scheme was discretionary.

[46] In contrast, one can look at the circumstances in another Federal Court case, *Canada (Information Commissioner)* v. *Canada (Minister of Public Works & Government Services)*, [1997] 1 F.C. 164 (T.D.), In that case access was sought to the names of former Members of Parliament in receipt of pension benefits pursuant to the *Members of Parliament Retiring Allowances Act*, R.S.C. 1985, c.M-5. One of the arguments advanced for disclosure was that the pension was a discretionary benefit since the people who benefit from it are the ones who control and legislate it. The trial judge held it was not a discretionary benefit since there were specified eligibility criteria (at para. 27):

> There is nothing discretionary about who receives a pension benefit under the MPRA Act. There are two requirements an MP must meet before he or she can receive a pension: he or she must be retired, and he or she must have six years of service. If those two qualifications are met, then a pension benefit is issued. If those two qualifications are not met, then no pension benefit is received. Accordingly, the discretionary benefit exception set out in paragraph 3(l) of the *Privacy Act* does not apply and the requested information is personal information which is excluded from disclosure.

[47] In the present case, the eligibility requirements for at-risk compensation are clearly set out in the "At-Risk Compensation Plan". They include exclusion from the bargaining unit, inability to collect overtime, being on staff on March 31 each year, and a minimum of 6 months in the position. Even the situation where an employee's performance is rated unsatisfactory is put in the context of eligibility (since that employee would be rated as "ineligible" to receive any at-risk compensation).

[48] In my opinion, the eligibility criteria for at-risk compensation is clearly set out. If an employee meets those criteria, then he or she is entitled to at-risk compensation. Put another way, the corporation is obligated to pay it. There may be discretionary elements contained within it, but the basic entitlement to the compensation is an aspect of the employment compensation arrangement. It may be that, as a result of one of those discretionary aspects (such as the personal component based on individual achievement), one employee receives less than another. But that does not make the payment any less obligatory on the part of the employer. And, in any event, each base salary is different so by that fact alone the amount of at-risk compensation will differ.

[49] It should also be noted that a significant part of the at-risk compensation paid to each employee is a non-discretionary calculation based on the corporation achieving its income targets. That is something shared by all eligible employees regardless of their individual performance appraisals. Such a non-discretionary payment forms part of each employee's contractual entitlement: see *Ste-Croix* v. *Placer Dome Inc*., [2000] B.C.J. No. 1081 (S.C.), at para. 21.

[50] The cases dealing with the payment of a bonus based on performance, in an employment context, usually turn on whether non-payment of a bonus is to be characterized as a fundamental breach of the employment contract. That is not the question here. What is relevant, and on this the law is clear, is that the payment of a bonus, if part of the employment contract, is recoverable by the employee by way of damages should the criteria for such a bonus not be adhered to by the employer: *Poole* v. *Tomenson Saunders Whitehead Limited*, [1987] 6 W.W.R. 273 (B.C.C.A.). That, in my opinion, is the character of the at-risk compensation scheme in this case.

[51] I have therefore concluded that the at-risk compensation payments are not gratuitous benefits within the meaning of ss. 23 (4)(e) and (h) of the Act. The information is not disclosable.

Severance:

[52] The appellants suggested that much of the information relating to the at-risk compensation amounts can be released if certain information, such as names, positions and salaries, are severed. The Act provides that where information that is excepted from disclosure can reasonably be severed from a record, there remains a right of access to the remainder of the record: s.5(2). Counsel's point, however, is that if this information is severed, the remainder is no longer "personal information" since it will no longer be information about an identifiable individual (that being the essence of the definition in s.2 of the Act).

[53] Counsel for the respondent submitted that this proposal is untenable since there is no way to protect against the identification of the employees in question if any of the information is released on an individualized basis. And, as counsel argued, it is enough if anyone, even another employee, is able to identify someone from the information provided.

[54] The main difficulty is the small size of the group. The president is a group of one. That person would be clearly identifiable no matter how much of the detail would be severed. Of the senior management group, there are 7 listed for 2004/2005 and 8 listed for 2005/2006. Then there are 33 middle management employees listed for 2004/2005 and 31 for 2005/2006. But, of these, only a few earn below $60,000 and only a few earn above $100,000, so those would clearly stand out from the rest.

[55] As respondent's counsel noted, it is important to remember that the salary ranges and classifications of all these employees are available since they are matters disclosable under s. 23(4)(e) of the Act. It would therefore be a simple matter of correlating the information provided with the salary range so as to identify the individual in question.

[56] Respondent's counsel referred me to other cases where seemingly anonymous information was nonetheless held to contain enough information which, if put in a certain context, could still identify the individual concerned: see, for example, *University of Alberta* v. *Alberta (Information & Privacy Commissioner)*, [2009] A.J. No. 211 (Q.B.).

[57] I also note the comments of Gontier J., writing on behalf of a unanimous Supreme Court in *Canada (Information Commissioner)* v. *Royal Canadian Mounted Police Commissioner*, [2003] 1 S.C.R. 66, regarding the broad scope of the definition of "personal information" contained in the pertinent federal statutes (at para. 23):

> The Access Act provides a general right to access, subject to certain exceptions, such as that in s. 19(1), which prohibits the disclosure of a record that contains personal information "as defined in section 3 of the *Privacy Act*." As its name indicates, the *Privacy Act"* protects the privacy of individuals with respect to personal information about themselves held by government institutions. By defining "personal information" as "information about an identifiable individual that is recorded in any form including [. . . ]," Parliament defined this concept broadly, In *Dagg, supra*, La Forest J. commented on the definition of "personal information," at paras. 68-69:
>
> > On plain reading, this definition is undeniably expansive. Notably, it expressly states that the list of specific examples that

> follows the general definition is not intended to limit the scope of the former. As this Court has recently held, this phraseology indicates that the general opening words are intended to be the primary source of interpretation. The subsequent enumeration merely identifies examples of the type of subject matter encompassed by the general definition; see *Schwartz* v. *Canada*, [1996] 1 S.C.R. 254, at pp. 289-91. Consequently, if a government record is captured by those opening words, it does not matter that it does not fall within any of the specific examples.
>
> As noted by Jerome A.C.J. in *Canada (Information Commissioner)* v. *Canada (Solicitor General), supra*, at p. 557, the language of this section is "deliberately broad" and "entirely consistent with the great pains that have been taken to safeguard individual identity". Its intent seems to be to capture *any* information about a specific person, subject only to specific exceptions. [emphasis in original]

[58] In a similar fashion the Act, in s.2, defines "personal information" as "information about an identifiable individual, including ...". It does not matter what form the information takes, if it is information that permits or leads to the possible identification of an individual, then it comes within the definition. There is authority holding that an "identifiable" individual is considered to be someone whom it is reasonable to expect can be identified from the information in question when combined with information from sources otherwise available, or identified by those familiar with the particular circumstances or events contained in the record: *Ontario (Attorney General)* v. *Ontario (Information and Privacy Commissioner)*, [2001] O.J. No. 4987 (Div.Ct.), at para. 15, aff'd [2002] O.J. No. 4300 (C.A.)

[59] In my opinion, considering the nature of the information sought and the small number of individuals to whom that information relates, it is reasonable to expect that those individuals could be identified if it were released. I therefore reject the request for severance.

Conclusions:

[60] For these reasons, I have concluded that the head of the respondent was correct in refusing to disclose the information sought. The appeal is therefore dismissed.

[61] Costs follow the event. The respondent shall recover its costs on the appropriate tariff set out in the *Rules of Court*.

J.Z. Vertes
J.S.C.

Dated this 13th day of July, 2009.

Counsel for the Appellants: Austin F. Marshall

Counsel for the Respondent: Glenn D. Tait

Docket: S-0001-CV-2007000126

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