SUPREME COURT OF NOVA SCOTIA
Citation: *Denike v. Dalhousie University*, 2018 NSSC 111

Date: 20180509
Docket: Hfx No. 459464
Registry: Halifax

Between:

Margaret Denike

Appellant

v.

Dalhousie University

Respondent

FOIPOP APPEAL DECISION

Judge:	The Honourable Justice M. Heather Robertson
Heard:	December 14, 2017, in Halifax, Nova Scotia
Decision:	May 9, 2018
Counsel:	Margaret Denike, self-represented appellant Roderick (Rory) H. Rogers, Q.C. and Sara Nicholson, for the respondent

Robertson J.:

BACKGROUND

[1] This appeal pursuant to s. 41 of the *Freedom of Information and Protection of Privacy Act*, S.N.S. 1993 c. 5 ("*FOIPOP"*) and Nova Scotia Civil Procedure Rules 7 and 85.07, arose from events relating to the operation of Dalhousie University's Personal Harassment Policy.

[2] The appellant was in a spousal relationship with a University Dean. They had come to Dalhousie in 2010. They have two children born in 2007 and 2009. The appellant was appointed a spousal appointee to the Faculty of Arts and Social Sciences, at the time the Dean was recruited to the University.

[3] In 2011, the appellant and her partner separated and took up separate residences.

[4] In 2011 the Dean, her former partner, began a new relationship with a member of her own faculty. They have resided together since 2011. There was a shared custody arrangement of the two sons of the Dean and the appellant. The University is a small community and quite naturally their lives intersected at the University, both professionally and personally, in the circumstances of their shared family and academic activities.

HISTORY OF THE PROCEEDINGS

[5] On April 7, 2015, the appellant received two formal complaints against her under the University's Personal Harassment Policy, initiated by the Dean and her new spouse. On April 21, 2015, the appellant filed a reply to both complaints. On May 28, 2015, she filed her own complaint against these two individuals, whose replies were then filed on June 9, 2015. In May 2015, the University retained an external investigator, Daniel Ingersoll, Q.C., to investigate the original complaints. He ultimately investigated all three complaints, as they related to the same facts.

[6] The appellant is of the opinion that once the complaints were lodged against her, a formal investigation was initiated too quickly, when informal resolution was the expected and preferred course of action.

[7] The appellant says the University took "a series of heavy handed decisions and exceptional courses of disciplinary action that have been profoundly consequential for me personally and professionally, and that were advanced and defended by certain legal staff in the office of Legal Counsel, and the office of Human Resources."

[8] The appellant alleges that these actions implemented against her were founded on misinformation and/or serious misrepresentation, that resulted in unprecedented courses of action against her. She felt that information contained in these records would help her defend herself against the various discipline related processes held over the relevant two-year period.

[9] Mr. Ingersoll concluded his investigation and provided a report to the University in February 2016. (It is contained in Volumes 2 and 3 of the nine volumes of material before me on this appeal.)

[10] As a result of the report, in March 2016 the University placed multiple restrictions on the appellant.

[11] On August 8, 2016, the appellant submitted a FOIPOP request to the University, request #FO1 – 2016 – 269, seeking access to documents under *FOIPOP*. She requested all email and correspondence that referenced her and were in the possession of the seven named individuals: the two original complainants against the appellant, a Dean, University legal counsel, a Human Rights and Equity Services Office Advisor, an Academic Staff Relations Officer, and Mr. Ingersoll.

[12] Upon receipt of the appellant's FOIPOP request, Alison Shea, the University's Privacy Officer, sought two thirty-day extensions from the Privacy Commissioner of Nova Scotia before responding to the requests.

[13] On November 28, 2016, the Privacy Officer provided the appellant with access to approximately five hundred pages of documents. The appellant was informed that some documents were not disclosed pursuant to *FOIPOP* exemptions under ss. 4, 14, 16, 20, and 2 of the *Act*. Some documents were redacted pursuant to *FOIPOP* exemptions. The appellant was informed that twenty pages of documents were still under review and would be disclosed on November 30, 2016. On that date, additional documents were disclosed with redactions pursuant to ss. 5(2) and 20(1) of *FOIPOP*. Later, on December 20, 2016, the University's Privacy Officer disclosed four invoices relating to Daniel Ingersoll's

invoice for services as an investigator. These invoices were disclosed with redactions pursuant to s. 16 and 20(1) of *FOIPOP*.

[14] On January 18, 2017, the appellant filed a Notice of Appeal to the Nova Scotia Supreme Court with respect to Dalhousie's *FOIPOP* disclosure decisions seeking access to documents that were not disclosed or that were redacted pursuant to *FOIPOP* exemptions.

[15] Justice Peter Rosinski heard a motion and directions on February 14, 2017, and issued an order related to the motion on February 28, 2017. The court asked that the appellant be provided with a volume of redacted documents with annotations relating to the sections of *FOIPOP* relied upon for the exemptions.

[16] Counsel for the respondent, in compliance with the order issued by Justice Rosinski, indicated in his brief that the documents previously disclosed to the appellant on November 28, November 30, and December 20, 2016, were again provided on February 17, 2017, with the requested annotations.

[17] The respondent then provided the court, on May 31, 2017, with nine sealed packages, pursuant to Justice Rosinski's order, listed as follows:

Volume 1	Section 4 of *FOIPOP*, Documents Not in the Custody or Control of Dalhousie;
Volume 2	Section 20 of *FOIPOP*, Formal Harassment Investigation Report and Interview Summaries;
Volume 3	Section 20 of *FOIPOP*, Formal Harassment Investigation Report and Interview Summaries;
Volume 4	Section 16 of *FOIPOP*, Solicitor-Client Privilege;
Volume 5	Section 16 of *FOIPOP*, Solicitor-Client Privilege;
Volume 6	Section 20 of *FOIPOP*, Personal Information of Third Parties;
Volume 7	Section 14 of *FOIPOP*, Advice;
Volume 8	Disclosed Documents with Highlighted Redactions and Annotations; and
Volume 9	Disclosed Documents with Highlighted Redactions and Annotations.

[18] With respect to disclosure, counsel also notes as follows:

> Volumes 1 to 7 also include a cross-reference schedule. The schedule indicates if the withheld document is exempt from production under an additional *FOIPOP* exemption.
>
> Volume 8 is a reproduction of the volume of documents provided to Professor Denike on February 17, 2017. Volume 8 produced to the Court contains yellow highlighted and annotated documents. The highlighted sections are subject to *FOIPOP* exemptions. The annotations refer to the relevant *FOIPOP* exemption being relied upon. However, the volume provided to Professor Denike included redactions instead of highlighting. The highlighted passages in volume 8 provided to the Court in a sealed form is intended to facilitate a consideration by this Honourable Court of the basis of redactions in the disclosure to Professor Denike.
>
> . . .
>
> On March 31, 2017, Dalhousie University provided Professor Denike another volume of redacted documents with annotations. It corresponds with Volume 9 that was provided to the Court. Again, the volume received by Professor Denike includes redactions pursuant to the *FOIPOP* exemptions, whereas Volume 9 includes yellow highlighted sections.
>
> Further, it should be noted that Dalhousie University relied Section 21 of *FOIPOP*, Confidential Labour Relations Information to withhold the following documents:
>
> (a) Pages 57 to 83 of Volume 1; and
>
> (b) Pages 207 to 210 and 453 to 460 of Volume 6.

[19] Justice Rosinski's order was revised on May 4, 2017, by consent, respecting the parties' filing deadlines.

LEGISLATION

[20] The purpose of the *FOIPOP Act* is set out at s. 2:

> Purpose of Act
>
> 2 The purpose of this Act is
>
> (a) to ensure that public bodies are fully accountable to the public by
>
> (i) giving the public a right of access to records,
>
> (ii) giving individuals a right of access to, and a right to correction of, personal information about themselves,
>
> (iii) specifying limited exceptions to the rights of access,
>
> (iv) preventing the unauthorized collection, use or disclosure of personal information by public bodies, and

(v) providing for an independent review of decisions made pursuant to this Act; and

(b) to provide for the disclosure of all government information with necessary exemptions, that are limited and specific, in order to

(i) facilitate informed public participation in policy formulation,

(ii) ensure fairness in government decision-making,

(iii) permit the airing and reconciliation of divergent views;

(c) to protect the privacy of individuals with respect to personal information about themselves held by public bodies and to provide individuals with a right of access to that information.

. . .

[21] The general principle of access is described at s. 5, which provides, in part:

Right of access

5 (1) A person has a right of access to any record in the custody or under the control of a public body upon complying with Section 6.

(2) The right of access to a record does not extend to information exempted from disclosure pursuant to this Act, but if that information can reasonably be severed from the record an applicant has the right of access to the remainder of the record.

. . .

[22] Reviews of access requests, and appeals to the court, are described at ss. 32 and 41. The opinions of the court on appeal are described at s. 42(1), and the burden of proof at s. 35:

Powers of Supreme Court

42 (1) On an appeal, the Supreme Court may

(a) determine the matter *de novo*; and

(b) examine any record *in camera* in order to determine on the merits whether the information in the record may be withheld pursuant to this Act.

. . .

(5) Where the head of the public body has refused to give access to a record or part of it, the Supreme Court, if it determines that the head of the public body is not authorized to refuse to give access to the record or part of it, shall

> (a) order the head of the public body to give the applicant access to the record or part of it, subject to any conditions that the Supreme Court considers appropriate; or
>
> (b) make any other order that the Supreme Court considers appropriate.
>
> (6) Where the Supreme Court finds that a record falls within an exemption, the Supreme Court shall not order the head of the public body to give the applicant access to the record, regardless of whether the exemption requires or
>
> merely authorizes the head of the public body to refuse to give access to the record.
>
> . . .
>
> Burden of proof
>
> 45 (1) At a review or appeal into a decision to refuse an applicant access to all or part of a record, the burden is on the head of a public body to prove that the applicant has no right of access to the record or part.
>
> (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.
>
> (3) At a review or appeal into a decision to give an applicant access to all or part of a record containing information that relates to a third party,
>
> > (a) in the case of personal information, 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; and
> >
> > (b) in any other case, the burden is on the third party to prove that the applicant has no right of access to the record or part.

DOCUMENTS AT ISSUE

[23] Pursuant to *Civil Procedure Rule* 85.07(1)(2)(3), the court has received nine sealed volumes containing documents that are allegedly confidential and protected by the *Act*.

[24] It is my intention to review these volumes as they relate numerically with exemptions under the *Act*:

- Section 4 of *FOIPOP* (custody or control);
- Section 14 of *FOIPOP* (advice to public body);
- Section 16 of *FOIPOP* (solicitor-client privilege);

- Section 20 of *FOIPOP* (personal information of a third party); and
- Section 21 of *FOIPOP* (confidential labour relations information).

[25] Mr. Rogers, solicitor for the respondent University has very ably organized this significant accumulation of materials, pursuant to the relevant exemptions and canvassed the legal principles that relate to the types of exempt information.

[26] Among the materials before me is a vast amount of email correspondence over three years that has actually been generated by the appellant. Multiple copies of correspondence then became parts of the materials sought as they attached to other email chains involving the seven named individuals in the appellant's *FOIPOP* request.

THE PURPOSE OF THE *FOIPOP ACT*

[27] In *O'Connor v. Nova Scotia (Deputy Minister of the Priorities and Planning Secretariat)*, 2001 NSCA 132, Justice Saunders, for the court, commented on the purposes of the statutory regime as expressed in s. 2 of the *Act*, at paras. 36 and 41:

> 36 Thus it can be seen that the Legislature has identified three objectives as constituting the purpose of the *Act*. First, to ensure that public bodies are fully accountable to the public. Second, to provide for the disclosure of all government information, subject to certain exemptions said to be "limited and specific". Third, to protect the privacy of individuals over their own personal information.
>
> …
>
> 41 The *FOIPOP Act* ought to be interpreted liberally so as to give clear expression to the Legislature's intention that such positive obligations would enure [sic] to the benefit of good government and its citizens.

[28] In comparing the Nova Scotia *FOIPOP* legislation with that of other provinces, Justice Saunders said:

> 56 Thus 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.
>
> 58 And so before turning to an analysis of s. 13, its meaning and its application to this case, I think it important to bear in mind these features that make our *Act* unique.

[29] Notwithstanding this purposeful interpretation, access and privacy legislation does not create unfettered access to all documents. The Supreme Court of Canada recently considered the purpose and exemptions of the Alberta *Freedom of Information and Protection of Privacy Act* in *Alberta (Information and Privacy Commissioner) v. University of Calgary*, 2016 SCC 53. Justice Côté, for the majority, held as follows:

> 30 Access to information is an important element of a modern democratic society. As this Court stated in *Criminal Lawyers' Association*:
>
> > Access to information in the hands of public institutions can increase transparency in government, contribute to an informed public, and enhance an open and democratic society. Some information in the hands of those institutions is, however, entitled to protection in order to prevent the impairment of those very principles and promote good governance. [para. 1]
>
> 31 One of the purposes of *FOIPP* is "to allow individuals, subject to limited and specific exceptions as set out in this Act, a right of access to personal information about themselves that is held by a public body" (s. 2(c)). As the language of s. 2(c) reveals, the statute does not grant unfettered access to records; requests for access are subject to certain exceptions.
>
> 32 *FOIPP* also creates a process for conducting "independent reviews of decisions made by public bodies under this Act and the resolution of complaints under this Act" (s. 2(e)). In this regard, a person making a request for access to a record "may ask the Commissioner to review any decision, act or failure to act" of the head of a public body relating to the request (s. 65(1)). The Commissioner's responsibilities include conducting investigations to ensure compliance with *FOIPP* (s. 53(1)(a)) and conducting inquiries to deal with requests for a review (s. 69(1)).

REVIEW OF THE DOCUMENTS

[30] In this case, beyond the disclosure made to the appellant, the University also redacted certain documents and did not disclose others.

[31] I have embarked on the examination of these nine volumes of documents. I will determine whether the exemption provisions of the *Act* have properly been adhered to. I cannot, however, describe in detail the content of these volumes. In *Fuller v. The Queen*, 2003 NSSC 58, Justice Pickup addressed this limitation:

> 40 What follows is a review of each document from the withheld record based on the principles of interpretation set out earlier in this decision. The question for determination is simply one of whether access to a withheld record can be denied because a record is within one or more of the exempt sections. I have analyzed the contents of each document and the context in which the document was prepared, presented and delivered. As the disputed documents that have been filed by the Respondent have been sealed in Court records, this Court can only describe the records at issue in general terms without reference to their specific contents. Because the documents are sealed, it is difficult for the Court to give specific reasons for its decision on each document, as reference cannot be made to the contents of these documents.

[32] The appellant is a self-represented party. I cautioned her during the hearing not to have unreasonable expectation of the role the court would play under this process.

[33] The nine volumes before the court constitute the record which I have reviewed. I must determine whether the record, in full or in part, is exempt from disclosure under the provisions of the *Act*.

[34] This is a hearing *de novo*. I am not engaging in an exercise that challenges or weighs the reasonableness of the decisions taken by the University and its officers.

Section 4

[35] The appellant only has the right of access to documents under *FOIPOP* that are in the custody or under the control of the public body. As per ss. 4 and 5 of the *Act*:

> 4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records.
>
> …
>
> 5(1) A person has a right of access to any record in the custody or under the control of a public body upon complying with Section 6.

[36] Volume 1 contains personal emails found on the University email server, that do not relate to departmental matters. They are in the nature of personal email

correspondence and thus are exempt from disclosure. Ms. Denike says that if the contents of Volume 1 refer to issues that gave rise to the harassment complaints they must be relevant background information and should be released.

[37] I must determine whether the Volume 1 records are in the custody, or control of Dalhousie.

[38] The appellant only has the right of access to documents under *FOIPOP* that are in the custody or under the control of the public body; as per s. 4 and 5 of the *Act*:

> 4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records.
>
> …
>
> 5(1) A person has a right of access to any record in the custody or under the control of a public body upon complying with Section 6.

[39] In *Information Commissioner of Canada v. Minister of National Defence*, 2011 SCC 25, Justice Charron enumerated the test for "control" in circumstances where the documents are not in the physical possession of the public institution:

> 55 Step one of the test acts as a useful screening device. It asks whether the record relates to a departmental matter. If it does not, that indeed ends the inquiry. The Commissioner agrees that the *Access to Information Act* is not intended to capture non-departmental matters in the possession of Ministers of the Crown. If the record requested relates to a departmental matter, the inquiry into control continues.
>
> 56 Under step two, *all* relevant factors must be considered in order to determine whether the government institution could reasonably expect to obtain a copy upon request. These factors include the substantive content of the record, the circumstances in which it was created, and the legal relationship between the government institution and the record holder. The Commissioner is correct in saying that any expectation to obtain a copy of the record cannot be based on "past practices and prevalent expectations" that bear no relationship on the nature and contents of the record, on the actual legal relationship between the government institution and the record holder, or on practices intended to avoid the application of the *Access to Information Act* (A.F., at para. 169). The reasonable expectation test is objective. If a senior official of the government institution, based on all relevant factors, reasonably *should* be able to obtain a copy of the record, the test is made out and the record must be disclosed, unless it is subject to any specific statutory exemption. In applying the test, the word "could" is to be understood accordingly.

[40] In the *Minister of National Defence* case, the appellant sought records including emails, relating to the activities of then Prime Minister, the Minister of National Defence, and the Minister of Transport. The records were located in the Prime Minister's and Minister's offices. The question was whether they were under the control of a government institution. Justice Charron defined control as follows as para. 48:

> 48 As "control" is not a defined term in the Act, it should be given its ordinary and popular meaning. Further, in order to create a meaningful right of access to government information, it should be given a broad and liberal interpretation. Had Parliament intended to restrict the notion of control to the power to dispose or to get rid of the documents in question, it could have done so. It has not. In reaching a finding of whether records are "under the control of a government institution", courts have considered "ultimate" control as well as "immediate" control, "partial" as well as "full" control, "transient" as well as "lasting" control, and "*de jure*" as well as "*de facto*" control. While "control" is to be given its broadest possible meaning, it cannot be stretched beyond reason. Courts can determine the meaning of a word such as "control" with the aid of dictionaries. The *Canadian Oxford Dictionary* defines "control" as "the power of directing, command (under the control of)" (2001, at p. 307). In this case, "control" means that a senior official with the government institution (other than the Minister) has some power of direction or command over a document, even if it is only on a "partial" basis, a "transient" basis, or a "*de facto*" basis. The contents of the records and the circumstances in which they came into being are relevant to determine whether they are under the control of a government institution for the purposes of disclosure under the Act (paras. 91-95).

[41] Justice Charron held that the records, were not under the control of a government institution. Additionally, they held that the Prime Minister's agendas, notes, and emails in the possession of the Privy Counsel office and the RCMP did not contain substantive information, but were exempt as personal information.

[42] Other cases have similarly dealt with emails as being exempt from disclosure, such as *University of Alberta v, Alberta (Information and Privacy Commissioner)*, 2012 ABQB 247 (paras. 86, 98, and 105) and *City of Ottawa v. Ontario*, 2010 ONSC 6835, where Justice Molloy held that personal emails of the employees were not within the public body's "custody or control." She also enumerated a ten-item list useful in assessing whether the requirements of custody and control are met.

> 30 The Arbitrator in this case adopted the criteria established in Order 120 by former Commissioner Sidney Linden as being relevant considerations for

determining whether the requirements of custody or control are met. Commissioner Linden emphasized that this was not meant to be an exhaustive list, but that these are merely the kinds of questions that could be considered in making such determinations. His 10-item list is a useful one and it is relevant to consider each item on the list in the context of the legislative purpose and intent.

> (1) Was the record created by an officer or employee of the institution?
>
> . . .
>
> (2) What use did the creator intent to make of the record?
>
> . . .
>
> (3) Does the institution have possession of the record, either because it has been voluntarily provided by the creator or pursuant to a mandatory statutory or employment requirement?
>
> . . .
>
> (4) If the institution does not have possession of the record, is it being held by an officer or employee of the institution for the purposes of his or her duties as an officer or employee?
>
> . . .
>
> (5) Does the institution have a right to possession of the record?
>
> . . .
>
> (6) Does the content of the record relate to the institution's mandate and functions?
>
> . . .
>
> (7) Does the institution have the authority to regulate the record's use?
>
> . . .
>
> (8) To what extent has the record been relied upon by the institution?
>
> . . .
>
> (9) How closely has the record been integrated with the other records held by the institution?
>
> . . .
>
> (10) Does the institution have the authority to dispose of the record?
>
> . . .

31 Thus, in my opinion, an examination of these factors from the perspective of scrutinizing government action and making government documents available to citizens so that they can participate more fully in democracy, points overwhelmingly to the conclusion that the documents cannot be said to be within the control of the City. The Arbitrator did not err in considering these factors to be

> relevant to her determination of what constitutes custody or control. She did err, however, in failing to consider those factors contextually in light of the purpose of the legislation.

[43] The emails in the *City of Ottawa* case were personal communications not related to the municipal governments, its mandate or function. The court held that the release of emails of this sort would only breach third parties' privacy rights and would not enhance the objectives of more accessible or open government.

[44] Similarly, the emails in Volume 1, which I have reviewed, are the kind of personal email communications that characterize most people's lives, dealing with daily events, schedules, social plans, the logistics of meeting with friends and family, volunteer activities, and social banter.

[45] I can only conclude they are personal emails and do not relate to departmental matters. They are personal correspondence that happens to be on the University's email server. Their disclosure would breach the authors' privacy rights and could serve no purpose from a public policy perspective. They are simply not related to the University's mandate and function.

Section 14

[46] Section 14 of the *Act* provides:

> Advice to public body or minister
>
> 14(1) The head of a public body may refuse to disclose to an applicant information that would reveal advice, recommendations or draft regulations developed by or for a public body or a minister.
>
> (2) The head of a public body shall not refuse pursuant to subsection (1) to disclose background information used by the public body.
>
> (3) Subsection (1) does not apply to information in a record that has been in existence for five or more years.
>
> (4) Nothing in this Section requires the disclosure of information that the head of the public body may refuse to disclose pursuant to Section 13.

[47] Background information is not exempt under s. 14. It is defined by s. 3(1)(a):

> 3(1) In this *Act,*
>
> (a) "background information" means

(i) any factual material,

[48] Volume 7 materials before me relate to emails between various staff and faculty at the University seeking input to determine a course of action. The emails contain advice or opinions and often contain a recommended course of action. They span the period March 11, 2015, to June 17, 2016. The communications are between faculty members, a staff relations officer, and a Dean, all with the purpose of advancing a course of action relating to the conditions that were imposed on the appellant following the Ingersoll Report.

[49] These are the types of communications considered to be advice, often advice regarding options or next steps, reflections on what the next step may be or discussion of pros and cons as options are considered.

[50] The most recent tribunal case dealing with s. 14 is *Nova Scotia (Justice) (Re)*, 2017 NSOIPC 1, relating to a workplace investigation in the Department of Justice. Privacy Officer Tully set out the following three-step test in considering the exemption. Relying on the definition of advice framed by the Supreme Court of Canada in *John Doe v. Ontario (Finance)*, 2014 SCC 36, she stated:

> [23] Section 14 applies to advice or recommendations. The Supreme Court of Canada recently pointed out that the term "advice" has a distinct meaning from "recommendation" and that the legislative intention must have been that the term "advice" has a broader meaning than the term "recommendations". Material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised falls into the category of recommendations.
>
> [24] Advice includes:
>
> - Policy options;
> - Advice regarding options;
> - Considerations to take into account by the decision maker; and
> - Opinion of the author as to the advantages and disadvantages of alternatives.
>
> [25] Evidence of an intention to communicate is not required, therefore drafts may be considered advice whether or not a final communicated version was ever produced.
>
> [26] Determining whether s. 14 applies involves a three step process. First, determine whether the record contains any advice or recommendations within the meaning of s. 14. Second, if s. 14 may apply to the record, determine whether the considerations set out in s. 14(2)-14(4) apply. If s. 14 may still apply to the

> record the public body should then determine whether it should nonetheless disclose the information in light of the fact that the provision is discretionary
>
> [27] The Department applied s. 14 to eight pages. The first step in determining whether or not s. 14 applies is to assess whether or not the documents contain any advice or recommendations. I find that the following type of information found in these documents qualifies as advice:
>
> - Considerations to be taken into account by the decision maker;
> - Potential options, sometimes revealed in questions;
> - Recommendations regarding potential courses of action.

[51] The Privacy Officer held that some of the materials fit the definition of advice and others did not. Privacy Officer Tully then turned to the matter of discretion:

> [34] In *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23 (CanLII), the court confirmed that discretionary decisions under privacy and access legislation must not be made in bad faith or for an improper purpose, must not take into account irrelevant considerations and must take into account relevant considerations. Some relevant considerations in the exercise of discretion include:
>
> - the wording of the discretionary exception and the interests which the section attempts to balance;
> - the historical practice of the public body with respect to the release of similar types of documents;
> - the nature of the record and the extent to which the document is significant and/or sensitive to the public body;
> - whether the disclosure of the information will increase public confidence in the operation of the public body;
> - the age of the record;
> - whether there is a sympathetic or compelling need to release materials;
> - whether previous orders of the Commissioner have recommended that similar types of records or information should or should not be subject to disclosure; and
> - when the policy advice exception is claimed, whether the decision to which the advice or recommendations relates has already been made.

[52] In light of the passage of time she recommended the Department revisit the decision not to release the materials.

[53] In another Nova Scotia decision, *Nova Scotia (Community Services) (Re)*, 2013 CanLII 62660, Privacy Officer McCallum held that the Department had the burden to prove whether the communication entailed advice or recommendations. The Department did not respond to or participate in the review, and so did not meet the burden, The Privacy Officer ordered the previously redacted portions disclosed. Respecting the burden of proof, she outlined the following five criteria for the Department:

> 1. Identify whether it is advice or a recommendation; *and*
> 2. Show how each piece of information withheld fits the definition of advice or recommendation; *and*
> 3. That the advice or recommendations was sought or expected; *and*
> 4. That the advice or recommendation was directed at someone who could do make a decision based on the advice or recommendation; *and*
> 5. There was a deliberative process.

[54] In *Nova Scotia (Labour and Advanced Education) (Re)*, 2011 CanLII 92511, Review Officer McCallum expressed herself a little differently, stating at p. 21:

> In order for the exemption to apply, the information must fit the definition - the information must lead to a course of action. Once that is established, a number of questions must be explored to see if the exemption is applicable. These questions include:
>
> - Was advice sought or expected?
> - What type of "advice" was sought?
> - Was the "advice" intended to be confidential?
> - At what action or decision was the "advice" directed?
> - Was the "advice" directed at someone who could take or implement the action or
> - decision? If yes, to whom was the "advice" directed? and
> - Were there candid discussions, deliberations or the like over the "advice" [i.e. a deliberative process]?

[55] With respect to the burden of proof on the Department of Labour, she stated, at p. 22:

> If the information does not fit the definition of advice or recommendation, the exemption cannot be applied.

> The burden of proof is with Labour to establish all three of the following:
>
> 1. How each piece of information withheld fits the definition of advice or recommendations;
> 2. If the definition of advice is met, Labour must demonstrate that the advice was sought or expected; and
> 3. That the advice was directed at someone who could take or implement the action or decision.

[56] In *Re Labour and Advanced Education* case, the Review Officer found the Department had failed to meet the burden and the material was disclosed.

[57] These tribunal decisions followed the earlier decision of the Supreme Court of Nova Scotia accepting that "advice must contain a suggested course of action which most advice and recommendations do": *Gaetz v. Nova Scotia (Attorney General)*, 2005 NSSC 215, at para. 24, and *Fuller v. The Queen*, 2003 NSSC 058, where advice was held to be part of a deliberative process.

[58] Having reviewed the emails contained in Volume 7, I find that they are advice and recommendations within the meaning of s. 14(1) of the *Act*. They have not been in existence for more than five years. The emails were a part of a deliberative process and thus are exempt.

Section 16

[59] Section 16 of the *Act* reads:

> Solicitor-client privilege
>
> 16 The head of a public body may refuse to disclose to an applicant information that is subject to solicitor-client privilege.

[60] The University's general counsel at the relevant time, Karen Crombie, explained her various roles at the University in her affidavit dated June 12, 2017.

[61] After describing her duties as general counsel (paras. 5 to 7) Ms. Crombie described her role in personal harassment cases in para. 9:

> 9. In complex personal harassment cases involving faculty members, in my role as General Counsel, I often provide advice as follows:
>
> (a) to the University's Human Rights and Equity Services Office (formally the Human rights, Equity and Harassment and Prevention Office which is responsible for administering their

applicable policies, including the Personal Harassment Policy, mostly in relation to the interpretation of the policies, the processes under the policies, and how to engage with the parties and with others in the University who may be impacted or who have asked their office for advice or information;

(b) to any investigator in relation to interpretation of the applicable policies and procedures;

(c) on occasion to the individual parties to the harassment complaint in relation to the scope of the policies, the scope of the confidentiality requirements under the policies and the intersection of the complaint with other proceedings outside of the University, always with re-direction back to the relevant unit responsible for managing the on-going process itself;

(d) to senior administrators (i.e. Deane, Assistant Vice-Presidents, Vice Presidents, and President) in relation to how to appropriately communicate and interact with and about the parties to the harassment complaint or those affected by the complaint (in the event that, and after, such individual approach them);

(e) to the Academic Staff Relations Office within the University's Human Resources department in relation to an action (i.e. discipline) that may be taken under the applicable collective agreement against a faculty member arising out of an adverse finding following an investigation under the policy; and

(f) to decision-makers under the applicable policy (frequently termed the "Administrative Head" under the policies), in relation to the options available to them and the risks associated with each.

[62] Ms. Crombie explained the occasion when she acted as an administrator, filling in for the vacant position of University Human Rights Advisor for the sole purpose of receiving the External Investigator's Report and forwarding it to relevant decision makers.

[63] There were occasions when Ms. Crombie gave advice that would fall under s. 14 exemptions, although largely her role involved solicitor's work as University counsel and could therefore attract a s. 16 exemption of solicitor-client privilege. Her duties would include providing legal policy and risk management advice to senior officers and academic units, and providing governance advice to senior university and personnel. A more comprehensive list of duties is contained in Exhibit "AA" to the appellant's affidavit, dated May 23, 2017, and includes:

(a) Provide counsel (legal, policy and risk management advice) to senior officers, administrative and academic units on a wide range of legal issues affecting university programs, activities and operations;

(b) Provide university governance advice and procedural advice to senior officers of the university, Board, and Senate; and

(c) Retain and instruct outside counsel on behalf of the University.

[64] Volumes 4 and 5 are written communications all marked confidential. They include an email chain between Ms. Crombie as general counsel and staff, faculty members, and senior administrators of the University.

[65] The communications in these two volumes relates to the personal harassment investigation which is at the root of this *FOIPOP* appeal. In these documents, Ms. Crombie provided advice to Deans, the Human Rights and Services Equity Office, and the Academic Staff Relations Office within the Human Resources Department of the University, relating to the harassment complaints and their impact on the faculty of law.

[66] Counsel for the University describe these email communications as a "continuum of legal advice," and have provided examples by way of illustration:

(a) Email correspondence on page 4 between Ms. Crombie and Dean of Dalhousie University. The Dean sought Ms. Crombie's advice with respect to a harassment complaint.

(b) Email correspondence on page 27 between Ms. Crombie and a Dean of Dalhousie University. Ms. Crombie provided legal advice.

(c) Email correspondence on page 41 to 54 between Ms. Crombie and a Dean of Dalhousie University. The Dean sought Ms. Crombie's advice with respect to a Dalhousie University respect to a proposed initiative. The email correspondence briefly and inadvertently includes a third person, a staff member of Dalhousie University.

(d) Email correspondence on pages 88 to 142 between Ms. Crombie and a Dean of Dalhousie University. The Dean sought Ms. Crombie's legal advice with respect to a proposed initiative for the Faculty. It should be noted that the majority of the correspondence occurs between the Dean and a third party. The correspondence was provided to Ms. Crombie by way of background.

(e) Email correspondence on pages 143 to 145 between Ms. Crombie and a staff member of Dalhousie Human Rights and Equity Services.

(f) Email correspondence on pages 150 to 229. The conversation includes Ms. Crombie. The emails contain legal advices as well as personal information of third parties and thus are exempt under section 20 of FOIPOP as well.

(g) Email correspondence on pages 343 to 370. The conversation includes Ms. Crombie. The emails contain a Dalhousie professor seeking advice as well as personal information of third parties and thus are exempt under section 20 of FOIPOP as well.

(h) Email correspondence on pages 522 to 528 between Ms. Crombie and a staff member of Dalhousie Human Rights and Equity Services. Ms. Crombie provides advice with respect to a harassment complaint.

(i) Email correspondence on pages 588 to 594 between Ms. Crombie and a Dean of Dalhousie University. Ms. Crombie provided an update with respect to with respect to a harassment complaint.

[67] Solicitor-client privilege is a cornerstone of our legal system. The Supreme Court of Canada, in *Canada (Privacy Commissioner) v. Blood Tribe Department of Health*, 2008 SCC 44, discussed solicitor-client privilege in the context of a general counsel's role. Justice Binnie stated, for the court:

> 9 Solicitor-client privilege is fundamental to the proper functioning of our legal system. The complex of rules and procedures is such that, realistically speaking, it cannot be navigated without a lawyer's expert advice. It is said that anyone who represents himself or herself has a fool for a client, yet a lawyer's advice is only as good as the factual information the client provides. Experience shows that people who have a legal problem will often not make a clean breast of the facts to a lawyer without an assurance of confidentiality "as close to absolute as possible":
>
> > [S]olicitor-client privilege must be as close to absolute as possible to ensure public confidence and retain relevance. As such, it will only yield in certain clearly defined circumstances, and does not involve a balancing of interests on a case-by-case basis.
> >
> > (*R. v. McClure*, [2001] 1 S.C.R. 445, 2001 SCC 14, at para. 35, quoted with approval in *Lavallee, Rackel & Heintz v. Canada (Attorney General)*, [2002] 3 S.C.R. 209, 2002 SCC 61, at para. 36)
>
> It is in the public interest that this free flow of legal advice be encouraged. Without it, access to justice and the quality of justice in this country would be severely compromised. The privilege belongs to the client not the lawyer. In *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, at p. 188, McIntyre J. affirmed yet again that the Court will not permit a solicitor to disclose a client's confidence.
>
> 10 At the time the employer in this case consulted its lawyer, litigation may or may not have been in contemplation. It does not matter. While the solicitor-client

> privilege may have started life as a rule of evidence, it is now unquestionably a rule of substance applicable to all interactions between a client and his or her lawyer when the lawyer is engaged in providing legal advice or otherwise acting as a lawyer rather than as a business counsellor or in some other non-legal capacity: *Solosky v. The Queen*, [1980] 1 S.C.R. 821, at p. 837; *Descôteaux v. Mierzwinski*, [1982] 1 S.C.R. 860, at pp. 885-87; *R. v. Gruenke*, [1991] 3 S.C.R. 263; *Smith v. Jones*, [1999] 1 S.C.R. 455; *Foster Wheeler Power Co. v. Société intermunicipale de gestion et d'élimination des déchets (SIGED) inc.*, [2004] 1 S.C.R. 456, 2004 SCC 18, at paras. 40-47; *McClure*, at paras. 23-27; *Blank v. Canada (Minister of Justice)*, [2006] 2 S.C.R. 319, 2006 SCC 39, at para. 26; *Goodis v. Ontario (Ministry of Correctional Services)*, [2006] 2 S.C.R. 32, 2006 SCC 31; *Celanese Canada Inc. v. Murray Demolition Corp.*, [2006] 2 S.C.R. 189, 2006 SCC 36; *Juman v. Doucette*, [2008] 1 S.C.R. 157, 2008 SCC 8. A rare exception, which has no application here, is that no privilege attaches to communications criminal in themselves or intended to further criminal purposes: *Descôteaux*, at p. 881; *R. v. Campbell*, [1999] 1 S.C.R. 565. The extremely limited nature of the exception emphasizes, rather than dilutes, the paramountcy of the general rule whereby solicitor-client privilege is created and maintained "[a]s close to absolute as possible to ensure public confidence and retain relevance" (*McClure*, at para. 35).
>
> 11 To give effect to this fundamental policy of the law, our Court has held that legislative language that may (if broadly construed) allow incursions on solicitor-client privilege must be interpreted restrictively. The privilege cannot be abrogated by inference. Open-textured language governing production of documents will be read *not* to include solicitor-client documents: *Lavallee*, at para. 18; *Pritchard*, at para. 33. This case falls squarely within that principle.

[68] In *Fuller, supra*, Justice Pickup discussed solicitor-client privilege, making the following comments:

> 36 As noted above, because legal advice privilege protects the relationship between solicitor and client, the key question to consider is whether the communications is made for the purpose of seeking or providing legal advice, opinion or analysis. Legal advice type privilege arises only where a solicitor is acting as a lawyer, and giving legal advice to a client. Therefore, in each instance where such privilege is claimed herein, the question should be "was the named government lawyer acting as a lawyer and providing legal advice when he/she received, commented on or initiated a document or correspondence?"
>
> 37 In R. v. Campbell, [1999] 1 S.C.R. 565 the Supreme Court of Canada at para 50 commented:
>
> > "it is, of course, not everything done by a government (or other) lawyer that attracts solicitor client privilege."
>
> 38 The Court went on to state:

> Whether or not solicitor client privilege attaches in any of these situations depends on the nature of the relationship, the subject matter of the advice and the circumstances in which it is sought and rendered.

[69] Some of the emails in these two volumes contain background information included in the communications for the purpose of obtaining and giving legal advice. It relates directly to the privileged issue for which the advice was sought and has not therefore been disclosed, as it forms part of the continuum of advice.

[70] I have determined that these two volumes (4 and 5), fall within the exemption of solicitor-client privilege.

Section 20

[71] Section 20 of the *FOIPOP* states:

> Personal information
>
> 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.
>
> (2) In determining pursuant to subsection (1) or (3) 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;
>
> (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
>
> (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.
>
> (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

(a) the personal information relates to a medical, dental, psychiatric, psychological or other health-care history, diagnosis, condition, treatment or evaluation;

(b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

(c) the personal information relates to eligibility for income assistance or social-service benefits or to the determination of benefit levels;

(d) the personal information relates to employment or educational history;

(e) the personal information was obtained on a tax return or gathered for the purpose of collecting a tax;

(f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

(g) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations;

(h) the personal information indicates the third party's racial or ethnic origin, sexual orientation or religious or political beliefs or associations; or

(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.

(4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

(a) the third party has, in writing, consented to or requested the disclosure;

(b) there are compelling circumstances affecting anyone's health or safety;

(c) an enactment authorizes the disclosure;

(d) the disclosure is for a research or statistical purpose and is in accordance with Section 29 or 30;

(e) the information is about the third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff;

(f) the disclosure reveals financial and other similar details of a contract to supply goods or services to a public body;

(g) the information is about expenses incurred by the third party while travelling at the expense of a public body;

> (h) the disclosure reveals details of a licence, permit or other similar discretionary benefit granted to the third party by a public body, not including personal information supplied in support of the request for the benefit; or
>
> (i) the disclosure reveals details of a discretionary benefit of a financial nature granted to the third party by a public body, not including personal information that is supplied in support of the request for the benefit or is referred to in clause (c) of subsection (3).
>
> (5) On refusing, pursuant to this Section, to disclose personal information supplied in confidence about an applicant, the head of the public body shall give the applicant a summary of the information unless the summary cannot be prepared without disclosing the identity of a third party who supplied the personal information.
>
> (6) The head of the public body may allow the third party to prepare the summary of personal information pursuant to subsection (5).

[72] This *FOIPOP* exemption, originally applies to Volume 6 of the materials before me, wherein the University claims that disclosure would amount to an invasion of third parties' personal privacy interests.

[73] Personal information is defined in s. 3(1)(i) of the *Act*:

> (i) "personal information" means recorded information about an identifiable individual, including
>
> (i) the individual's name, address or telephone number,
>
> (ii) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations,
>
> (iii) the individual's age, sex, sexual orientation, marital status or family status,
>
> (iv) an identifying number, symbol or other particular assigned to the individual,
>
> (v) the individual's fingerprints, blood type or inheritable characteristics,
>
> (vi) information about the individual's health-care history, including a physical or mental disability,
>
> (vii) information about the individual's educational, financial, criminal or employment history,
>
> (viii) anyone else's opinions about the individual, and
>
> (ix) the individual's personal views or opinions, except if they are about someone else;

[74] Section 20 is an exclusion section, bearing a reverse onus. Under s. 45(2) the appellant must prove that the disclosure of the materials in Volume 6 would not be an unreasonable invasion of a third party's personal information.

> 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.

[75] In *Re House*, 2000 CarswellNS 429, [2000] N.S.J. No. 473 (NSSC), Justice Moir reviewed inter-related provisions of the *Act*. He stated, at para. 4:

> Subsection 5(1) of the *Act* provides a general right of access to records in the control of public bodies. The *Act* makes various exceptions to this general right, and then it deals with personal information. Consistent with the purpose of the *Act*, as stated in section 2, subsection 20(1) does not deal with personal information merely as an exception to the general right of access. It prohibits disclosure "if the disclosure would be an unreasonable invasion of a third party's personal privacy." According to subsection 20(2) the question of an unreasonable invasion of privacy is to be determined upon "all the relevant circumstances", and the subsection goes on inclusively to provide a list of factors. Subsection (3) specifies nine classes of information, the disclosure of which is presumed to be an unreasonable invasion of privacy. Subsection (4) provides that "disclosure of personal information is not an unreasonable invasion of ... privacy" in any of nine circumstances. Finally, subsection 45(2) places the burden on the applicant to prove disclosure would not be an unreasonable invasion of privacy where access to personal information is sought.

[76] This approach was confirmed by the Nova Scotia Court of Appeal in *Nova Scotia (Public Prosecution Services) v. Fitzgerald Estate*, 2015 NSCA 38. Justice Cromwell, in an earlier decision, *Dickie v. Nova Scotia (Department of Health)*, 1999 NSCA 62, [1999] N.S.J. No. 116, held that s. 20 was a mandatory exemption. He said, at para 8:

> 8 The Statute provides for a general right of access "to any record in the custody or under the control of a public body" but this right does not extend to "information exempted from disclosure pursuant to [the] Act": s. 5(1) and (2). The Act creates a number of exemptions from disclosure. Many of these are discretionary in the sense that the head of a public body may refuse disclosure on various grounds: see e.g. s. 13 - 19. Other exemptions are mandatory in the sense that the head of a public body is obliged by the Statute not to disclose certain types of information. The issues on this appeal relate most directly to the

> mandatory exemption relating to personal information. It is helpful, therefore, to review it in more detail.

[77] In *French v. Dalhousie University*, 2002 NSSC 22, Justice Moir held that names, addresses, and telephone numbers of the authors, including statements regarding the author's professional academic background and references to other faculty members, were within the definition of "personal information" in s. 3 of *FOIPOP*.

[78] In 2004 Justice Pickup in *Fuller*, *supra*, similarly held that names, titles, and addresses of third parties contained in "employment history" are protected.

[79] I have examined Volume 6, which contains various email correspondence from July 2013 until August 2016, involving correspondence involving the seven individuals named in the appellant's report. I agree with the University that the emails contain personal third party information, and that they could not be reasonably redacted as provided by s. 5 of the *Act*.

[80] I also agree that s. 20(4) of *FOIPOP* does not apply. The materials were appropriately withheld from disclosure.

[81] The release of the materials in Volume 6 would have been an unreasonable invasion of privacy pursuant to s. 20(3)(d) of *FOIPOP*.

[82] The s. 20(3)(d) exemptions also apply to Volumes 2 and 3 of the materials before me. Those are the formal Harassment Investigation Report (Volume 2) and Interview Summaries (Volume 3). Workplace investigations by their nature involve third party interviews, thus containing third party personal information.

[83] Workplace investigation reports were extensively discussed in Nova Scotia (Justice) (2017). In particular, the issue of witness statements was considered, and the Commissioner employed the four-step approach, asking:

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? Is so, that is the end.
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?

[84] Mr. Ingersoll's Report dealt with the three harassment complaints involving the same set of facts. He interviewed many individuals. The University says the individuals supplied the information in confidence. There were twelve witness summaries. Six of the twelve witnesses' identities remained anonymous.

[85] I agree with University that the personal information contained in Volumes 2 and 3 could not easily be severed under s. 5(2) of *FOIPOP* and must not be disclosed.

Section 21

[86] Lastly, contained within Volumes 1 and 6 of the materials before the court are discrete pages for which the University has applied the Labour Relations Information exemption pursuant to s. 21 of the *Act*:

> Confidential information
>
> 21 (1) The head of a public body shall refuse to disclose to an applicant information
>
> (a) that would reveal
>
> (i) trade secrets of a third party, or
>
> (ii) commercial, financial, labour relations, scientific or technical information of a third party;
>
> (b) that is supplied, implicitly or explicitly, in confidence; and
>
> (c) the disclosure of which could reasonably be expected to
>
> (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
>
> (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
>
> (iii) result in undue financial loss or gain to any person or organization, or
>
> (iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour-relations dispute.

[87] These pages are found at Volume 1, pages 57 to 83, and Volume 6, pages 207 to 210 and 453 to 460.

[88] The information consists of emails between University professors, the Human Resources Department, the Dalhousie Faculty Association ("DFA"), as well as the Chair of the DFA Grievance Committee. This information was supplied in confidence. The subject matter also relates to the grievance process. These materials meet the three-part test set out in s. 21 of the *Act* (see *Halifax Herald Ltd. v. Nova Scotia (Worker's Compensation Board)*, 2008 NSSC 369, Warner J. at para. 49).

CONCLUSION

[89] Upon my full review of the record, I have concluded that the exemption provisions of the *Act* were properly complied with by the University. Disclosure of the documents contained in Volumes 1 to 9 to the appellant would not be in keeping with the purposes of FOIPOP, nor would it increase the transparency of Dalhousie's decision making process. In the result, the appeal is dismissed. I would urge the University not to seek costs.

Justice M. Heather Robertson