December 23, 2008 **A-2008-014**

NEWFOUNDLAND AND LABRADOR

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

REPORT A-2008-014

College of the North Atlantic

Summary: The Applicant applied under the *Access to Information and Protection of Privacy Act* (the "*ATIPPA*") for access to all documents containing a reference to him sent to or from a number of specified employees of the College of the North Atlantic (the "College"). The Commissioner determined that the College had properly severed information under sections 13 (repetitive or incomprehensible request) and 30 (disclosure of personal information). The Commissioner concluded that the College had appropriately severed some information in accordance with section 21 because the information was subject to legal advice privilege. The Commissioner did not accept the argument of the College that it could deny access to certain information on the basis of litigation privilege in accordance with section 21. The Commissioner recommended the release of the information for which the College had claimed the litigation privilege exception pursuant to section 21.

Statutes Cited: *Access to Information and Protection of Privacy Act*, S.N.L. 2002, c. A – 1.1, ss. 2(o), 13, 20, 21, and 30.

Authorities Cited: Newfoundland and Labrador OIPC Report 2008-002; Nova Scotia Review Officer Report FI-03-42; *R. v. Campbell*, 1999 CanLII 676 (SCC); *Hamalainen v. Sippola*, 1991 CanLII 440 (BCCA); *Solosky v. The Queen*, [1980] 1 S.C.R. 821.

I BACKGROUND

[1] Under authority of the *Access to Information and Protection of Privacy Act* (the "*ATIPPA*") the Applicant submitted an access to information request to the College of the North Atlantic (the "College") on 15 May 2008, wherein he sought disclosure of records as follows:

> *Any and all documents including but not limited to emails and attachments, memos, and/or letters containing a reference to me, including but not limited to* [*Applicant's name*] *to, from, or between* [*6 Employees of the College*]. *I would like the search to be from June 1, 2005 to November 1, 2005.*

[2] The College in a letter dated 13 June 2008 advised the Applicant that his request was granted in part but that it was denying access to certain information in the 143 pages of the responsive record on the basis of section 13 (repetitive or incomprehensible request), section 20 (policy advice or recommendations), section 21 (legal Advice) and section 30 (disclosure of personal information).

[3] In a Request for Review received in this Office on 1 August 2008 the Applicant asked for a review of the decision of the College with respect to his access request.

[4] Attempts to resolve this Request for Review by informal means were not successful and by letters dated 5 November 2008 the Applicant and the College were advised that the Request for Review had been referred for formal investigation pursuant to section 46(2) of the *ATIPPA*. As part of the formal investigation process the parties were given the opportunity to provide written submissions to this Office pursuant to section 47.

II PUBLIC BODY'S SUBMISSION

[5] The College set out its submission in correspondence dated 21 November 2008. The College provided reasons for its refusal of access on the basis of section 13, section 20, section 21, and section 30.

[6] In relation to its denial of access on the basis of section 13, the College states that the access request that forms the basis of this Request for Review is similar to a previous request that the Applicant made to the College in which the Applicant requested all communications between a number of named individuals that referenced him. The College points out that the six individuals named in the present access request were also named in the previous request. Therefore the College submits that some of the information in the responsive record has already been disclosed to the Applicant pursuant to the previous request. In addition, the College notes that some of the information severed was disclosed elsewhere in the responsive record. Thus, the College submits that the severing of the information in accordance with section 13 was appropriate because that information has already been provided to the Applicant.

[7] In its submission, the College states that it is relying on the exception in section 20 for two e-mail attachments that are found on pages 55 to 56 and on pages 58 to 59 of the responsive record. The College submits that these two attachments are briefing notes prepared by the College's General Counsel for submission to the Minister of Education and, therefore, the information in them can be withheld under section 20 as advice or recommendations.

[8] The College claims in its submission that the solicitor and client privilege exception set out in section 21 is applicable to severed information found on pages 23 to 39 and pages 55 to 59 of the responsive record. In relation to the information on pages 23 to 35, the College states that this information is contained in a series of e-mails between the College's General Counsel and the Campus Administrator for the College. According to the College, the Campus Administrator, as the Applicant's immediate supervisor, was preparing a performance evaluation on the Applicant. The College in its submission states as follows:

> *In this series of email the supervisor,* [*Campus Administrator*]*, was preparing the evaluation in August and required and requested legal advice of CNA's General Counsel. . . . The supervisor is not simply copying* [*General Counsel*] *for discussion purposes or in an attempt to attract solicitor-client privilege.* [*General Counsel*] *was copied on this email from* [*the Campus Administrator*] *for the purpose of obtaining legal advice.* [*General Counsel*] *reviewed the documents and made appropriate changes.*

> *Under normal operations* [*General Counsel*] *would not have been involved in the performance evaluation being done as part of the progressive dispute or in the drafting of such. The applicant was a unionized employee and all discipline matters with unionized employees are handled by the Labour Relations Office, with no input from the General Counsel's Office unless there is an anticipation of legal action.*
>
> [*General Counsel*] *was then, and still is, a practicing member of the Newfoundland and Labrador Law Society. At the time of these e-mails, he was the General Counsel to CNA. It was his responsibility to provide CNA and its employees with legal advice pertaining to the operation of the College. We disagree that CNA is not* [*General Counsel's*] *client, as the Applicant maintains. CNA was in fact his only client and he was prohibited from taking on other clients. The fact that a lawyer may also be an employee of his client is irrelevant to the relationship between the two – he was still a lawyer and his employer was still his client.*
>
> *CNA maintains that pages 23-35 of the records meet all the criteria to be considered solicitor-client privileged communications. They are (i) communications between a solicitor, acting in his or her professional capacity, and the client; (ii) the communication must entail the seeking or giving of legal advice; and (iii) the communication must be intended to be confidential by the parties.*

[9] The College claims litigation privilege as part of the exception in section 21 in relation to the information severed in an e-mail found on page 36 of the responsive record and an attachment to the e-mail found on pages 37 to 39. The College states in its submission:

> *The document attached to the e-mail on page 36 was not copied to CNA's General Counsel. It was however prepared in contemplation of litigation and for the purpose of obtaining legal advice. Therefore CNA has claimed litigation privilege for this document.*
>
> . . .
>
> *Please see attached letter to CNA's President from the Labour Relations Officer . . . dated August 22, 2005. Much of the information contained in the record on pages 36 to 39 was used in the meeting mentioned in this letter and later found its way into this letter. The letter details that those present at this meeting with the Labour Relations Officer were the Vice-President Academic . . . , who is the ultimate supervisor of all the faculty members, and the General Counsel.*
>
> *As we have stated above, with respect to unionized personnel, matters of discipline, and generally, termination, are usually handled through the Labour Relations Office in collaboration with the direct supervisor of the employee. General Counsel would not have been involved in disciplinary matters and*

> *generally not involved in termination matters. Given that this matter had escalated to the point that the termination was being considered, the legal opinion of CNA's General Counsel was sought and [General Counsel] was invited to the meeting. With termination under consideration the Labour Relations Office sought legal advice as at this point litigation was anticipated.*
>
> *The document attached to the email on page 36 was created as a tool to be used by the Labour Relations Officer in order to obtain legal advice from the General Counsel at this meeting. Again we note that this document leads up to the August 22, 2005 letter. Much of the information in the document on pages 38 and 39 is used in the August 22, 2005 letter which was crafted by the Labour Relations Officer to incorporate the input and legal advice received from* [*General Counsel*] *at the meeting held previously.*

[10] In its submission, the College quotes a passage from *Hamalainen v. Sippola*, 1991 CanLII 440 (BCCA) dealing with litigation privilege:

> *Any attempt to apply the rule when determining a claim of privilege with respect to a document necessarily requires that two factual determinations be made:*
>
> > *(a) Was litigation in reasonable prospect at the time it was produced, and*
> > *(b) If so, what was the dominant purpose for its production?*
>
> . . .
>
> *A more difficult question to resolve is whether the dominant purpose of the author, or the person under whose direction each document was prepared, was "... [to use] it or its contents in order to obtain legal advice or to conduct or aid in the conduct of litigation ...".*

[11] In relation to the information severed in accordance with section 30, the College submits that the severed information constitutes personal information as it is defined in section 2(o) of the *ATIPPA.*

III APPLICANT'S SUBMISSION

[12] The Applicant did not provide a written submission but in his Request for Review form he stated:

> *I feel there are items deleted that in fact should be disclosed to me. Of particular concern are references to a "performance evaluation" (College disclosure pages 23-39 inclusive) which never took place which* [*the Campus Administrator*] *put forward to senior management as a reason for my planned dismissal. I realize that some (or most) of that exchange involved* [*the College's General Counsel*] *but what his role would have been in the situation is questionable at best. I suspect the college copied* [*General Counsel*] *so as to make the documents solicitor/client privileged. Again this comes down to the argument that* [*General Counsel*] *is an employee of the college and the college is not his client.*
>
> *I am requesting a review of the College's omissions in this search as indicated above as again the information is vital to my arbitration case against the College and would help prove that there was in fact within management a "ganging up" against me. Further, the so-called "performance evaluation" proves the actions of the College to be nothing short of a orchestrated "witch-hunt".*

IV DISCUSSION

[13] The issues to be discussed in this Report are whether sections 13, 20, 21 or 30 are applicable to any of the information in the responsive record as claimed by the College.

1. Section 13 (Repetitive or incomprehensible request)

[14] The College has denied access to certain information in the responsive record on the basis of section 13, which provides as follows:

> *13. The head of a public body may refuse to disclose a record or part of a record where the request is repetitive or incomprehensible or is for information already provided to the applicant.*

[15] In relation to its denial of access on the basis of section 13, the College states that the access request that forms the basis of this Request for Review is similar to a previous request that the Applicant made to the College. Therefore the College submits that some of the information in the responsive record has already been disclosed to the Applicant in accordance with the previous request. In addition, the College notes that some of the information severed in the responsive record was disclosed elsewhere in the responsive record.

[16] I have reviewed the wording of the previous request made by the Applicant and compared it to the access request that forms the basis of this Request for Review. I find that the names of the College employees for whom the Applicant requested the communications in the present access request also appear in the previous access request and the information sought in the two requests is similar. Given the similarity between the two requests, I am satisfied that the information severed on pages 3-4, 11, 21, 22, and 42-44 was already disclosed to the Applicant as part of the previous access request and, therefore, access to this information was properly denied in accordance with section 13.

[17] In addition, I am satisfied that the information severed on pages 29 and 35 was disclosed on page 23 of the responsive record and, for that reason, access to that information was properly denied in accordance with section 13.

2. Section 20 (Policy advice or recommendations)

[18] The College has denied access to certain information in the responsive record claiming the exception set out in section 20 which provides in part as follows:

> *20. (1) The head of a public body may refuse to disclose to an applicant information that would reveal*
>
> *(a) advice or recommendations developed by or for a public body or a minister; or*

[19] The College has relied on section 20 to deny access to information on pages 55 to 56 and on pages 58 to 59. The College has also claimed the solicitor and client exception in section 21 in relation to this same information. In view of my findings regarding the applicability of section 21 to this information, it will not be necessary for me to discuss whether the College has properly claimed the exception in section 20.

3. Section 21 (Legal Advice)

[20] The College has denied the Applicant access to certain information relying on the exception to disclosure set out in section 21, which provides as follows:

> *21. The head of a public body may refuse to disclose to an applicant information*
>
> *(a) that is subject to solicitor and client privilege; or*
>
> *(b) that would disclose legal opinions provided to a public body by a law officer of the Crown.*

[21] In Report 2008-002, I discussed section 21 at paragraphs 25 to 27:

> *[25] . . . I am of the view that section 21 of the ATIPPA provides protection against disclosure of documents subject to either legal advice privilege or litigation privilege. In other words, the phrase "solicitor and client privilege" in section 21 includes both of these privileges.*
>
> *[26] In Report 2007-012, my predecessor discussed the three criteria established by the Supreme Court of Canada in Solosky that must be met in order for information to be subject to solicitor-client privilege under section 21 and stated these at paragraph 69:*
>
> *. . .*
>
> *(i) it is a communication between solicitor and client,*
> *(ii) which entails the seeking or giving of legal advice, and*
> *(iii) which is intended to be confidential by the parties.*
>
> *[27] These three criteria are, of course, applicable only to legal advice privilege and not to litigation privilege, because litigation privilege is not limited to communications between a solicitor and client, as was stated by the Supreme Court of Canada in Blank at paragraph 27:*
>
> > *27 Litigation privilege, on the other hand, is not directed at, still less, restricted to, communications between solicitor and client. It contemplates, as well, communications between a solicitor and third parties or, in the case of an unrepresented litigant, between the litigant and third parties. Its object is to ensure the efficacy of the adversarial process and not to promote the solicitor-client relationship. And to achieve this purpose, parties to litigation,*

> *represented or not, must be left to prepare their contending positions in private, without adversarial interference and without fear of premature disclosure.*

[22] The College's claim of the section 21 exception in relation to pages 23 to 35 and pages 55 to 59 involves a claim for the legal advice privilege aspect of the solicitor and client exception. The information on these pages is found in two separate e-mail exchanges by the College's General Counsel with two employees of the College. The College claims that the severed information on these pages meets the three criteria established by the Supreme Court of Canada in *Solosky v. The Queen*, [1980] 1 S.C.R. 821:

> (i) it is a communication between solicitor and client,
> (ii) which entails the seeking or giving of legal advice, and
> (iii) which is intended to be confidential by the parties.

[23] I have reviewed these two e-mail exchanges between the General Counsel and the two employees. I find that they are communications between a solicitor and a client which entail the seeking and giving of legal advice. I note that the e-mails from the General Counsel contain the following statement: "This e-mail message is SOLICITOR-CLIENT PRIVILEGED and contains information intended only for the person(s) named herein. Any other distribution, copying or disclosure in strictly prohibited." In my opinion this statement provides supporting evidence that the parties to the e-mails intended them to be confidential. As such, it is my finding that the information in the two e-mail exchanges meets the three criteria set out in *Solosky* and, therefore, this information is protected by solicitor and client privilege.

[24] The Applicant questions whether the General Counsel as an employee of the College can be in a solicitor and client relationship with the College. The College replies to this position of the Applicant by stating that it does not matter that the General Counsel is an employee of the College; the General Counsel was still a practicing lawyer giving advice to a client who was also his employer.

[25] The Applicant's concern regarding the College's General Counsel being an employee of his client was addressed by the Supreme Court of Canada in *R. v. Campbell*, 1999 CanLII 676 at paragraph 50:

> *50 It is, of course, not everything done by a government (or other) lawyer that attracts solicitor-client privilege. While some of what government lawyers do is indistinguishable from the work of private practitioners, they may and frequently do have multiple responsibilities including, for example, participation in various operating committees of their respective departments. Government lawyers who have spent years with a particular client department may be called upon to offer policy advice that has nothing to do with their legal training or expertise, but draws on departmental know-how. Advice given by lawyers on matters outside the solicitor-client relationship is not protected. A comparable range of functions is exhibited by salaried corporate counsel employed by business organizations. Solicitor-client communications by corporate employees with in-house counsel enjoy the privilege, although (as in government) the corporate context creates special problems . . .*
>
> *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. One thing is clear: the fact that Mr. Leising is a salaried employee did not prevent the formation of a solicitor-client relationship and the attendant duties, responsibilities and privileges.*
>
> [Emphasis added]

[26] Applying the principles set out by the Supreme Court of Canada in *Campbell*, it is my finding that the College's General Counsel, when he exchanged e-mails with the two employees of the College, was in a solicitor-client relationship with the College and this relationship existed despite the fact that the General Counsel was a salaried employee of the College.

[27] Thus, it is my opinion that the information severed by the College on pages 23 to 35 and pages 55 to 59 is protected by solicitor and client privilege and, therefore, the College was entitled to deny access to this information on the basis of the exception in section 21 of the *ATIPPA*.

[28] As indicated, the College also relies on the exception in section 21 to deny access to the information severed on pages 36 to 39 on the basis that it is protected by litigation privilege. The

severed information on these pages is contained in an e-mail with an attachment sent by the College's Campus Administrator to the College's Labour Relations Officer on 20 August 2005. The College has stated the following in its submission:

> *The document attached to the e-mail on page 36 was not copied to CNA's General Counsel. It was however prepared in contemplation of litigation and for the purpose of obtaining legal advice. Therefore CNA has claimed litigation privilege for this document.*
>
> . . .
>
> *The document attached to the email on page 36 was created as a tool to be used by the Labour Relations Officer in order to obtain legal advice from the General Counsel at this meeting.*

[29] The issue of when litigation privilege can be claimed was discussed by the British Columbia Court of Appeal in *Hamalainen v. Sippola*, 1991 CanLII 440. In that case, the court stated:

> *Regardless of the terminology used to apply it, the correct rule, as adopted in **Voth**, is that stated by Barwick C.J. of the Australian High Court in **Grant v. Downs** (1976), 135 C.L.R. 674 at p.677:*
>
> > *Having considered the decisions, the writings and the various aspects of the public interest which claim attention, I have come to the conclusion that the court should state the relevant principle as follows: a document which was produced or brought into existence either with the dominant purpose of its author, or of the person or authority under whose direction, whether particular or general, it was produced or brought into existence, of using it or its contents in order to obtain legal advice or to conduct or aid in the conduct of litigation, at the time of its production in reasonable prospect, should be privileged and excluded from inspection.*
>
> *Any attempt to apply the rule when determining a claim of privilege with respect to a document necessarily requires that two factual determinations be made:*
>
> > *(a) Was litigation in reasonable prospect at the time it was produced, and*
> > *(b) If so, what was the dominant purpose for its production?*
>
> . . .

> *The onus is on the party claiming privilege to establish on a balance of probabilities that both tests are met in connection with each of the documents falling within the claim. . . .*
>
> *I am not aware of any case in which the meaning of "in reasonable prospect" has been considered by this Court. Common sense suggests that it must mean something more than a mere possibility, for such possibility must necessarily exist in every claim for loss due to injury whether that claim be advanced in tort or in contract. On the other hand, a reasonable prospect clearly does not mean a certainty, which could hardly ever be established unless a writ had actually issued. In my view litigation can properly be said to be in reasonable prospect when a reasonable person, possessed of all pertinent information including that peculiar to one party or the other, would conclude it is unlikely that the claim for loss will be resolved without it. . . .*
>
> *A more difficult question to resolve is whether the dominant purpose of the author, or the person under whose direction each document was prepared, was "... [to use] it or its contents in order to obtain legal advice or to conduct or aid in the conduct of litigation ...".*

[30] Therefore, the College bears the burden of proving on a balance of probabilities that when the documents in question were prepared there was a reasonable prospect of litigation *and* that the author of the document (or the person at whose direction it was prepared) prepared the document for the dominant purpose of seeking legal advice or to conduct or aid in the conduct of litigation.

[31] A set of facts similar to those in this Request for Review was discussed by the Nova Scotia Freedom of Information and Protection of Privacy Review Officer in Report FI-03-42. Given the similarity of the facts, I will quote extensively from Report FI-03-42 as follows:

> *The record in dispute is a single-page report into an incident which led to charges being laid against the Applicant, and his subsequent suspension. It is signed by the Applicant's supervisor and by the head of the Justice Centre.*
>
> . . .
>
> *Two months after the incident report was completed, the Applicant was suspended without pay. A union grievance was filed with the Department when the Applicant was suspended. The grievance passed through its three stages (the immediate supervisor, the Director and the Deputy Minister) without resolution. The matter will go to arbitration this Fall.*

. . .

In a four-page submission to the Review Officer, the Department said the incident report was prepared for a dual purpose: as a prelude to discipline, and in "contemplation of litigation", and is therefore privileged.

. . .

The Department argues that incident reports are not always prepared for discipline cases alone. It said "it is also our understanding that if these reports are prepared, it is for a dual purpose: for disciplinary purposes and for use in the grievance/arbitration process with the Nova Scotia Government Employees' Union (NSGEU) if disciplinary decisions are appealed". It is also the Department's understanding that "the vast majority of disciplinary decisions of NSGEU are grieved, and hence the practice of preparing reports that although used for discipline, primarily envision use in preparation for and during the arbitration process." The Department goes on to explain that the report may or may not be disclosed during the arbitration process and, if it isn't, privilege is not waived. The Department concluded that it was not certain that the incident report would be disclosed during the arbitration hearings.

. . .

With respect to the Department's claim of solicitor-client privilege, the union says there is evidence to refute the assertion that the report was prepared for the "dominant purpose" of preparing for litigation. It noted that the letter of discipline the Applicant received from an acting Executive Director of the Department, made it clear that in making its decision to suspend the Applicant, the Department had relied on the incident report.

. . .

In my recent Review - FI-03-44 - I also cited Manes and Silver who, on page 93, said a "dominant purpose" test "really consists of three elements, each of which must be met":

> *1. It must have been produced with contemplated litigation in mind. The document cannot have existed before and merely obtained to provide to a solicitor;*
>
> *2. The document must have been produced for the dominant purpose of receiving legal advice or as an aid to the conduct of litigation; and*
>
> *3. There must be "a reasonable contemplation of litigation".*

> *Manes and Silver expects more than a "general apprehension of litigation".*
>
> . . .
>
> *I have confirmed that the Applicant was told, in the letter of discipline dated October 24, 2002, that the Executive Director relied on the incident report in making his decision. In fact the applicant was told this in the first sentence of the letter.*
>
> *In my view, there can be no doubt that the "dominant purpose" of the incident report was to determine the appropriateness of "discipline". At the time the report was prepared the Department could have no more than what Manes and Silver describe as a "general apprehension of litigation". It appears to me that the Department attached privilege to the report "just in case" it was needed for litigation, and the Orders cited by the Department to support its decision make it clear that this is not acceptable.*

[32] The information to which the College denies access on the basis of litigation privilege is contained in an e-mail and an attachment. The e-mail is dated 20 August 2005 and was sent by the Campus Administrator to a Labour Relations Officer with the subject line "Thoughts". The e-mail itself has been disclosed to the Applicant with the exceptions of the line which identifies the attachment and a telephone number. Access to the attachment has been denied in its entirety. It appears then that the author of the e-mail is the Campus Administrator, who was sending the attachment to the Labour Relations Officer for her "thoughts". The College states in its submission that the attachment "was created as a tool to be used by the Labour Relations Officer in order to obtain legal advice from the General Counsel" at the meeting attended by the Labour Relations Officer, General Counsel, and the Vice-President Academic. This meeting resulted in the letter dated 22 August 2005 sent by the Labour Relations Officer to the President of the College.

[33] As indicated, the College must demonstrate that the author of the attachment, the Campus Administrator, prepared it for the dominant purpose of seeking legal advice or to conduct or aid in the conduct of litigation. There has been no evidence presented by the College to show that when the Campus Administrator prepared his e-mail he was aware that the Labour Relations Officer would use that information in her meeting with the General Counsel. The subject line of the e-mail appears simply to ask the Labour Relations for her "thoughts". There is not sufficient

evidence to prove that when the Campus Administrator composed the e-mail he did so for the purpose of using it to obtain legal advice. It may very well be that the Labour Relations Officer used some of the information during her discussion with the General Counsel and the Vice-President Academic at their meeting. However, the issue is not the use that was made of the document, rather the issue is the dominant purpose for which it was created by its author. As was stated by the Nova Scotia Review Officer in Report FI-03-42 citing Manes and Silver: "The document cannot have existed before and merely obtained to provide to a solicitor."

[34] It is clear to me from my reading of the attachment found on pages 37 to 39 that at the time it was composed the Campus Administrator was aware that the College was considering the possibility of terminating the Applicant's employment. Therefore, it appears that one of the purposes of compiling the information in the attachment was to aid in the consideration of the termination of the Applicant. However, it is my opinion that at the time the attachment was composed there was what the court in *Hamalainen* referred to as no "more than a mere possibility" of litigation. For "such possibility must necessarily exist in every" termination of employment. There was, to use the words cited by the Nova Scotia Review Officer in Report FI-03-42, at most a "general apprehension of litigation." There was not a reasonable prospect of litigation.

[35] I note that the Applicant's employment was terminated on 16 September 2005. The termination resulted in the Applicant filing a grievance and that grievance is now the subject of an arbitration hearing. Nevertheless, the evidence is not sufficient to convince me that when the Campus Administrator composed his e-mail and the attachment on 20 August 2005 he did so in reasonable contemplation of litigation and for the dominant purpose of seeking legal advice or to conduct or aid in the conduct of litigation.

[36] As a result, it is my view that the College cannot rely on the litigation privilege branch of the exception in section 21 to deny access to the information severed on pages 36 to 39. I note that in these pages there are a number of references to the first name of another individual. These references constitute the personal information of the named individual and, although it has not

been claimed by the College in relation to these pages, section 30(1) prohibits the disclosure of the individual's first name.

4. Section 30 (Disclosure of personal information)

[37] The Colleges claims that certain of the information is personal information and its disclosure is, therefore, prohibited by section 30(1), which provides as follows:

> *30. (1) The head of a public body shall refuse to disclose personal information to an applicant.*

[38] Personal information is defined in section 2(o) as follows:

> *(o) "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 status or history, including a physical or mental disability,*
>
> *(vii) information about the individual's educational, financial, criminal or employment status or history,*
>
> *(viii) the opinions of a person about the individual, and*
>
> *(ix) the individual's personal views or opinions*;

[39] The College has claimed the section 30(1) exception in relation to the information severed on page 3 and pages 17-20. I find that the information severed on page 3, being the names of third parties, is personal information and should not be disclosed. In relation to the severed information on pages 17-20, I find that the information contains the names of students of the College and this personal information should not be released to the Applicant.

[40] The College has claimed the section 30(1) exception for the telephone number severed on page 36. This is the home telephone number of a College employee and is, therefore, that employee's personal information. The College has properly claimed the exception in section 30(1) in relation to the telephone number.

[41] The College has claimed the exception in section 30(1) for the information on pages 55 to 56 and 58 to 59. Since I have already determined that the College was entitled to withhold the information on these page because it is protected by solicitor and client privilege, it will not be necessary for me to decide whether this information is covered by the section 30(1) exception.

[42] The College has claimed the section 30(1) exception for the information severed on pages 61 to 140. The severed information is the personal information of employees of the College and, therefore, the College has properly denied access to this information.

V CONCLUSION

[43] I have concluded that the College has properly severed information in the responsive record in accordance with section 13 of the *ATIPPA*.

[44] I have also concluded that the College has properly denied access to the severed information on pages 23 to 35 and pages 55 to 59 in accordance with the legal advice privilege branch of the solicitor and client privilege exception set out in section 21 of the *ATIPPA*.

[45] In addition, I have concluded that the College is not entitled to rely on the litigation privilege branch of the solicitor and client privilege exception in section 21 to refuse access to the information severed on pages 36 to 39. However, section 30(1) does prohibit the disclosure of the first name of another individual that appears in a number of places on these pages.

[46] Also, I have concluded that the College has properly severed other information in accordance with the personal information exception set out in section 30(1) of the *ATIPPA*.

VI RECOMMENDATIONS

[47] Under the authority of section 49(1) of the *ATIPPA*, I hereby recommend that the College of the North Atlantic release to the Applicant the information severed on pages 36 to 39 of the responsive record, with the exception of the first name of an individual that appears in a number of places on these pages.

[48] Under authority of section 50 of the *ATIPPA* I direct the head of the College of the North Atlantic to write to this Office and the Applicant within 15 days after receiving this Report to indicate the final decision of the College of the North Atlantic with respect to this Report.

[49] Please note that within 30 days of receiving a decision of the College of the North Atlantic under section 50, the Applicant may appeal that decision to the Supreme Court of Newfoundland and Labrador Trial Division in accordance with section 60 of the *ATIPPA.*

[50] Dated at St. John's, in the Province of Newfoundland and Labrador, this 23rd day of December 2008.

E.P. Ring
Information and Privacy Commissioner
Newfoundland and Labrador