

June 29, 2009

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (“FOIPOP Act”)
COURT OF APPEAL DECISION

In 2003, a business representative and union organizer for the IBEW, made application under the *Freedom of Information and Protection of Privacy Act* (“FOIPOP Act”) in Nova Scotia for a list of names of electricians and apprentice electricians held by the Department of Education.

A group of unnamed electricians concerned about privacy and disclosure of personal information by the Department to a union organizer became involved in an appeal process. This group filed for, and was granted Intervener Status in 2005.

In the end, the Court of Appeal decided that the release of the list of names of persons who hold certificates of qualification and certificates of apprenticeship in the construction electrical trade is not an unreasonable invasion of personal privacy under the FOIPOP Act. Accordingly, the Department of Education must disclose this list of names to the Applicant.

In a matter such as this, the Court undertakes an analysis under Section 20 of the FOIPOP Act. There are different steps to that analysis and many factors to consider. However, the Court of Appeal decision seemed to turn on the following things:

- The fact that the Courts have interpreted the legislation in Nova Scotia to be deliberately more generous to its citizens and intended to give the public greater access to information than is otherwise contemplated in the other provinces and territories in Canada.
- The Court of Appeal’s finding that the information was not supplied in confidence. Specifically, the Court relied heavily on the fact that the Department of Education had an existing practice of disclosing the information on a case-by-case basis.

- The fact that the names, and their appearance on the list in the possession of the Department, are not sensitive or stigmatizing information. The Court noted that disclosure would not unfairly damage the reputation of any of the persons on the list. Also, the Court kept coming back to the fact that the Department discloses the names on a case-by-case basis.
- Finally, the Court held that the information could not be characterized as relating to “educational” history. Justice LeBlanc in the Supreme Court held that the names on the list did constitute “educational” history. This was very advantageous since it created a presumption of an invasion of third party personal privacy under the *FOIPOP Act*. However, the Court of Appeal held that Justice LeBlanc had erred since the list did not contain any information with respect to an individual’s educational background, such as schools attended, course, discipline and assessments, which is necessary in order to fall within the definition of “educational” history.

This decision is an important one for non-unionized contractors across Canada. It appears to be the first time in Canada a trade union has attempted to use “access to information legislation” to obtain a list of prospective members. This precedent will no doubt be used by unions to obtain lists of certified trades people and apprentices (in any trade) in their respective jurisdiction.

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