

**IN THE SUPREME COURT OF CANADA  
(ON APPEAL FROM THE NOVA SCOTIA COURT OF APPEAL)**

B E T W E E N:

**A.B. BY HER LITIGATION GUARDIAN, C.D.**

Appellant

- and -

**BRAGG COMMUNICATIONS INCORPORATED, a body corporate, HALIFAX HERALD  
LIMITED, a body corporate and GLOBAL TELEVISION**

Respondents

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**FACTUM OF THE INTERVENER,  
THE PRIVACY COMMISSIONER OF CANADA**

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## PART I – FACTS AND OVERVIEW

1. Privacy is a norm having constitutional status. Where, as here, privacy must be balanced with the open courts principle, another norm having constitutional status, courts must identify the underlying values of each norm the facts engage, and assess the weight of the contextual and influencing factors in play. Both courts below erred by failing to do this. The matter should be remanded to the motions judge to balance privacy with the open courts principle properly, in light of the contextual factors in play.
2. The Privacy Commissioner adopts the facts stated by the appellant.

## PART II - ISSUES

3. These submissions are limited to the legal framework the judge had to consider when weighing privacy rights in a balance opposite the open courts principle.

## PART III – SUBMISSIONS

### Privacy: Constitutional Status

4. Privacy is a quasi-constitutional principle.<sup>1</sup> This is because “protection of privacy is necessary to the preservation of a free and democratic society.”<sup>2</sup>
5. Privacy is now well-recognized as the foundational principle for fundamental rights set out in sections 7 and 8 of the *Charter*,<sup>3</sup> as a *Charter* value supportive of other fundamental constitutional rights and norms,<sup>4</sup> as a principle of fundamental justice,<sup>5</sup> as “a pressing and

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<sup>1</sup> *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, [2002] 2 S.C.R. 773 at para 25: “The Official Languages Act and the Privacy Act are closely linked to the values and rights set out in the Constitution, and this explains the quasi-constitutional status that this Court has recognized them as having.”

<sup>2</sup> *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, [2002] 2 S.C.R. 773 at para 25.

<sup>3</sup> *R. v. Sharpe*, [2001] 1 S.C.R. 45 at para. 26; *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145; *R. v. Genest*, [1989] 1 S.C.R. 59; *R. v. Plant*, [1993] 3 S.C.R. 281; *R. v. Mills*, [1999] 3 S.C.R. 668; *R. v. Duarte*, [1990] 1 S.C.R. 30; *R. v. Tessling*, [2004] 3 S.C.R. 432; *R. v. O’Connor*, [1995] 4 S.C.R. 411; *M.(A.) v. Ryan*, [1997] 1 S.C.R. 157.

<sup>4</sup> *R. v. Sharpe*, [2001] 1 S.C.R. 45 at para. 26; *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] 2 S.C.R. 522 at para. 72; *R. v. O’Connor*, [1995] 4 S.C.R. 411 at para. 113; See also *Committee on the Constitution*, the Canadian Bar Association, *Towards a New Canada*, (Montreal, 1978) at p. 16.

<sup>5</sup> *R. v. Mills*, [1999] 3 S.C.R. 668 at para. 61.

substantial concern in a free and democratic society”<sup>6</sup> and, ultimately, as “worthy of constitutional protection.”<sup>7</sup>

### **Informational Privacy**

6. *Informational privacy* is the right ““of individuals, groups, or institutions to determine for themselves when, how and to what extent information about them is communicated to others.””<sup>8</sup>
7. Informational privacy is protected because ““all information about a person is in a fundamental way his own, for him to communicate or retain...as he sees fit.””<sup>9</sup>
8. The *Privacy Act*<sup>10</sup> is a quasi-constitutional<sup>11</sup> code of informational privacy rights.<sup>12</sup> The *Act* contains restrictions similar to those elaborated in this Court’s jurisprudence.
9. Although the right to informational privacy is quasi-constitutional, it is not absolute. The right is context sensitive; it requires that information gathering, use and dissemination be appropriate to the particular context.
10. This Court explained informational privacy as a reasonable expectation that personal information disclosed for one purpose should not be used for unauthorized or unrelated purposes.<sup>13</sup>

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<sup>6</sup> *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326 at para. 21.

<sup>7</sup> *R. v. Dymnt*, [1988] 2 S.C.R. 417 at para. 17.

<sup>8</sup> *R. v. Tessling*, [2004] 3 S.C.R. 432 at para. 23 (quoting A. F. Westin, *Privacy and Freedom* (1970), at p. 7).

<sup>9</sup> *R. v. Tessling*, [2004] 3 S.C.R. 432 at para. 23 (quoting Report of a Task Force established jointly by Department of Communications/Department of Justice, *Privacy and Computers* (1972), at p. 13); See also: *R. v. Dymnt*, [1988] 2 S.C.R. 417 at para. 22; *R. v. Duarte*, [1990] 1 S.C.R. 30 at paras. 36-37..

<sup>10</sup> R.S.C. 1985, c. P-21.

<sup>11</sup> *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, [2002] 2 S.C.R. 773 at para 25.

<sup>12</sup> Section 3 of the *Privacy Act* ensures that all information about an identifiable individual that is recorded in any form is protected. Section 4 limits government institutions to collecting only personal information that relates directly to an operating program or activity of the institution; subsection 5(2) requires government to inform individuals of the use for which personal information is collected; and section 8 prohibits government institutions from disclosing information except as specifically authorized.



11. For example, the law may authorize the state to acquire and store personal information for tax-collection and census taking purposes, but prohibit the state from releasing this information to the public or other departments for secondary uses.
12. Restricting disclosure for secondary uses may be appropriate even if personal information has previously been divulged to third parties<sup>14</sup> or made public.<sup>15</sup>

### Values Underlying Informational Privacy Rights

13. Privacy “ranks high in the hierarchy of values meriting protection in a free and democratic society.”<sup>16</sup>

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<sup>13</sup> *R. v. Dyment*, [1988] 2 S.C.R. 417 at para. 22: “In modern society, especially, retention of information about oneself is extremely important. We may, for one reason or another, wish or be compelled to reveal such information, but situations about where the reasonable expectations of the individual that the information shall remain confidential to the persons to whom, and restricted to the purposes for which it is divulged, must be protected”; *R. v. Mills*, [1999] 3 S.C.R. 668 at para. 108: “Privacy interests in modern society include the reasonable expectation that private information will remain confidential to the persons to whom and restricted to the purposes for which it was divulged”.

<sup>14</sup> See, for example, *R. v. Duarte*, [1990] 1 S.C.R. 30 (recognizing a continuing s. 8 privacy interest in the content of private conversations voluntarily held with a state agent who recorded them without the accused’s consent); *R. v. Mills*, [1999] 3 S.C.R. 668 at 108 (recognizing a sexual assault complainant’s continuing s. 8 privacy interest in therapeutic records disclosed to the state: “Privacy is not an all or nothing right. It does not follow from the fact that the Crown has possession of the records that any reasonable expectation of privacy disappears”); *R. v. Dyment*, [1988] 2 S.C.R. 417 at para. 31 (recognizing a continuing s. 8 privacy interest in a blood sample a doctor collected with implied consent finding it could not be collected for law enforcement purposes without a warrant); *R. v. O’Connor*, [1995] 4 S.C.R. 411 (recognizing a continuing privacy interest of sexual assault complainants in protecting their identities in criminal justice proceedings, notwithstanding their disclosure to and invocation of state apparatus to prosecute the offence); *F.N. (Re)*, [2000] 1 S.C.R. 880 (a limited statutory exception to disclosure of information pertaining to young offenders was found to be insufficiently broad to permit disclosure of identifying information to school boards for collateral public purposes and uses).

<sup>15</sup> See, for example, *Canadian Broadcasting Corp. v. The Queen*, [2011] 1 S.C.R. 65 (upholding a court order prohibiting public broadcasting of a video statement by an accused that had been produced as an exhibit in public proceedings by the Crown and viewed by journalists at that time); *Vickery v. Nova Scotia Supreme Court (Prothonotary)*, [1991] 1 S.C.R. 671 (upholding privacy interest of an acquitted accused in audio and videotapes tendered in evidence at trial and subsequently deemed inadmissible); *Canadian Broadcasting Corp. v. Canada (Attorney General)*, [2011] 1 S.C.R. 19 (upholding restrictions on broadcasting film, photographs and interviews with individuals in courthouses and recognizing that participants in public litigation nevertheless retain privacy rights: “When litigants participate in the justice system, they do not waive their right to privacy”(90); *Toronto Star Newspapers Ltd. v. Canada*, [2010] 1 S.C.R. 721 (upholding constitutionality of a mandatory publication ban on evidence and information publicly disclosed in a bail hearing, in part to limit stigma to the accused of untested evidence); *Aubry v. Editions Vice-Versa*, [1998] 1 S.C.R. 591 (upholding plaintiff’s right to privacy in public spaces); See also *United States Department of Justice et al. v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989) in which the United States Supreme Court recognized citizens’ ongoing privacy interests in personal information available from various sources in the public domain.

<sup>16</sup> *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326 at para. 90 per La Forest in dissent.

14. Where, as in this case, it is necessary to balance privacy with another constitutionally protected principle, the analysis must reach into the underlying values and contextual factors relevant to *both* interests to assess the appropriate weighting of each.
15. Informational privacy rights and expressive freedoms can be closely aligned<sup>17</sup> and promote the same core values: “truth, political or social participation and self-fulfilment.”<sup>18</sup>
16. Informational privacy allows individuals to freely determine whether to speak, to whom to speak, what thoughts to reveal and what degree of publicity to give their views.
17. Like freedom of expression, informational privacy is “integral to individual flourishing and diversity.”<sup>19</sup> It promotes self-fulfilment by permitting creative expression that is often not possible within<sup>20</sup> or suitable for<sup>21</sup> the public sphere.
18. Informational privacy facilitates relationships of trust that contribute to self-fulfilment and human flourishing.<sup>22</sup> The ability to share, or restrict access to sensitive personal information creates the environment necessary for friendship and love to bloom.<sup>23</sup> Societies that do not promote these relationships are unlikely to flourish or be fulfilling.

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<sup>17</sup>Committee on the Constitution, the Canadian Bar Association, *Towards a New Canada*, (Montreal, 1978) at p. 16: “The right to privacy is a prerequisite to freedom of speech, expression, thought, conscience, opinion, assembly and association. It is inconsistent to guarantee these rights directly when a person’s knowledge that his privacy may be violated will indirectly inhibit the exercise of the guaranteed rights”; See also *R. v. Sharpe*, [2001] 1 S.C.R. 45 at para. 106 and *Canada (Canadian Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892 at para. 77.

<sup>18</sup> *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927 at para. 53; *Ford v. Quebec (Attorney General)*, [1988] 2 S.C.R. 712 at para. 56; *Canadian Broadcasting Corp. v. Canada (Attorney General)*, [2011] 1 S.C.R. 19 at para. 2; *R. v. Keegstra*, [1990] 3 S.C.R. 697 at paras. 87-89; *R. v. Zundel*, [1992] 2 S.C.R. 731 at para. 22.

<sup>19</sup> *R. v. Sharpe*, [2001] 1 S.C.R. 45 at para. 26.

<sup>20</sup> D.J. Solove, *The Virtues of Knowing Less: Justifying Privacy Protections Against Disclosure*, *Duke Law Journal* Vol. 53, 967 at p. 991; See also Westin, Alan F. *Privacy and Freedom*. New York: Atheneum, 1970 at p. 37: “Studies of creativity show that it is in reflective solitude and even ‘daydreaming’ during moments of reserve that most creative ‘non-verbal’ thought takes place. At such moments the individual runs ideas and impressions through his mind in a flow of associations; the active presence of others tends to inhibit this process”.

<sup>21</sup> *R. v. Sharpe*, [2001] 1 S.C.R. 45 at paras. 107-109.

<sup>22</sup> *R. v. Mills*, [1999] 3 S.C.R. 668 at para. 82; *M.(A.) v. Ryan*, [1997] 1 S.C.R. 157 at para. 29.

<sup>23</sup> Kupfer, J., *Privacy, Autonomy, and Self-Concept*. *American Philosophical Quarterly*, Vol. 24, No. 1, January 1987, p. 81-89 at p. 85 citing Fried, C., *Privacy: A Rational Context*, in *Today’s Moral Problems* (New York, 1980) at p. 369.

19. The ability to share, or restrict access to sensitive personal information enables us to play a multitude of self-fulfilling and socially useful roles.
20. For example, a teacher might disseminate freely personal information about her sexual orientation at a pride parade or gay bar, but be highly discrete about that information in her classroom.<sup>24</sup>
21. In this respect, the ability to share, or restrict access to sensitive personal information promotes dignity, integrity and autonomy.<sup>25</sup>
22. Informational privacy promotes political and social participation. It fosters diverse and experimental ideas. It permits spontaneous, unguarded discourse in whatever social and public contexts in which the speaker is comfortable.<sup>26</sup>
23. The ability to remain anonymous, an aspect of informational privacy, can be essential for robust participation. For example, strict requirements to identify oneself at political demonstrations or in online discussion groups would constrict expressive activities.
24. Informational privacy promotes truth-telling and truth-seeking.
25. In the justice system, limits on the use and disclosure of certain types of evidence at and post-trial promote truth-seeking by lessening the risk of unfounded and discriminatory inferences<sup>27</sup> and unfair reputational tarnish.<sup>28</sup>

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<sup>24</sup> H. Nissenbaum, *Privacy as Contextual Integrity*, Washington L.R. Vol. 79, 2004: 119, 122.

<sup>25</sup> *R. v. Tse*, [2012] S.C.J. No. 16, para 21: “‘dignity, integrity and autonomy’ are values underlying a privacy interest...”; *R. v. Dymont*, [1988] 2 S.C.R. 417 at para. 22.

<sup>26</sup> J. E. Cohen, *Examined Lives: Informational Privacy and the Subject as Object*, 52 *Stan. L. R.* 1373, 1425 (2000): “A realm of autonomous, unmonitored choice...promotes a vital diversity of speech and behaviour”; D.J. Solove, *The Virtues of Knowing Less: Justifying Privacy Protections Against Disclosure*, *Duke L.J.* Vol 53: 967 at 991: “Privacy permits individuals to contemplate and discuss political change, create counterculture, or engage in meaningful critique of society”; H. Nissenbaum, *Privacy as Contextual Integrity*, Washington L.R. Vol. 79, 2004: 119 at 150: “...the vitality of democracy depends not only on an autonomous and thoughtful citizenry – bolstered through privacy – but on concrete protection against public scrutiny of certain spheres of decision-making, including but not limited to the voting booth”

<sup>27</sup> *R. v. Mills*, [1999] 3 S.C.R. 668 at para. 89; *R. v. O’Connor*, [1995] 4 S.C.R. 401 at paras. 31, 94, 132.

26. Protection for identifying information also promotes truth-telling and seeking by facilitating access to justice and encouraging victims<sup>29</sup> and informants<sup>30</sup> to report crime.
27. Most fundamentally, informational privacy promotes truth indirectly, through its role facilitating social and political discourse and promoting self-fulfilment. By furthering the conditions necessary for the creation of and discourse about diverse, controversial and creative ideas, informational privacy facilitates society's collective search for truth.

Claims for informational privacy are, then, fundamentally about much more than the private sensibilities of individual citizens. Informational privacy is critical to a number of collective social values and goals, including those that underlie freedom of expression.

### **Relevant contextual factors**

28. This Court has recognized certain contextual factors as buttressing informational privacy. Where individual identity, youth, vulnerability or legal innocence are in play informational privacy claims grow in strength.<sup>31</sup>
29. Accordingly, where individual identity, youth, vulnerability or legal innocence are present, information gathering and dissemination require stronger justification.
30. This is similar to limits on speech. Limits that further the core values underlying freedom of expression require a high level of justification while limits on expression that exist at the margins are easier to justify.<sup>32</sup>

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<sup>28</sup> *Vickery v. Nova Scotia Supreme Court (Prothonotary)*, [1991] 1 S.C.R. 671 at para. 38: "Someone who has been accused and convicted of a serious crime on the basis of self-incriminating evidence obtained in violation of his Charter rights should not be made to bear the stigma resulting from unrestricted repetition of the very same illegally obtained evidence".

<sup>29</sup> *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835 at para. 83; *Canadian Newspapers Co. v. Canada (Attorney General)*, [1988] 2 S.C.R. 122 at para. 18; *R. v. Seaboyer*, [1991] 2 S.C.R. 577 at pp. 605-6; *R v. Pan*; *R. v. Sawyer*, [2001] 2 S.C.R. 344 at paras. 50, 52.

<sup>30</sup> *Named Person v. Vancouver Sun*, [2007] 3 S.C.R. 253 at para. 39; *Vancouver Sun (re)*, [2004] 2 S.C.R. 332 at para. 71.

<sup>31</sup> *R. v. Mills*, [1999] 3 S.C.R. 668 at para. 80; *R. v. R.C.* [2005] 3 S.C.R. 99 at paras. 42-45; *F.N. (Re)*, [2000] 1 S.C.R. 880; *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. at paras. 27, 72, 94; *Canadian Broadcasting Corp. v. The Queen*, [2011] 1 S.C.R. 65; *Vickery v. Nova Scotia Supreme Court (Prothonotary)*, [1991] 1 S.C.R. 671; *Nova Scotia (Attorney General) v. MacIntyre*, [1982] 1 S.C.R. 175.

### Assessing the Appellant's Claim for Informational Privacy

31. The appellant requests informational privacy. She wants to limit dissemination of two kinds of information about herself: her name and the fake Facebook description of her allegedly preferred sexual acts.<sup>33</sup>
32. The appellant claims that the requirement to reveal this information in open court would link her identity to episodes of bullying and to false sexualized information about her – available online, everywhere and forever.
33. The appellant's claim is contextualized in the internet age, where new technologies facilitate virtually unlimited access to public records for a vast audience whose interests straddle a myriad of collateral purposes including a large prurient contingent.
34. Adjudication of the appellant's claim for informational privacy follows the *Dagenais/Mentuck* roadmap which is correctly set out in appellant's factum at para 45.
35. *Dagenais* rejected a hierarchical approach to competing rights. It required “a balance to be achieved that fully respects the importance of both sets of rights.”<sup>34</sup>
36. Thus, once an applicant displaces the presumption of openness by satisfying the first prong of the *Dagenais/Mentuck* test, the competing interests must be balanced in the second phase in a non-hierarchical fashion.
37. The *Dagenais/Mentuck* test does not require applicants to surpass a higher evidentiary standard than that which would apply under the *Oakes* test.<sup>35</sup> Common sense “may be

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<sup>32</sup> *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199 at para. 72; *Thomson Newspapers Co. v. Canada (Attorney General)*, [1998] 1 S.C.R. 877 at para. 91.

<sup>33</sup> Appellant's Redacted Factum, p. 32, para. 98.

<sup>34</sup> *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835 at para. 72.

<sup>35</sup> *Canadian Broadcasting Corp. v. Canada (Attorney General)*, [2011] 1 S.C.R. 19 at para. 56: the *Dagenais/Mentuck* test “requires neither more nor less than the one from *Oakes*”.

appropriately employed in judicial reasoning where the possibility of harm is within the everyday knowledge and experience of Canadians.”<sup>36</sup>

38. Where an applicant seeks more than one type of discretionary relief against the open courts principle, *Mentuck* requires the Court to assess each aspect of the applicant’s request for relief discretely, to ensure a proper balancing analysis takes place.<sup>37</sup>

### **Errors in the Lower Courts**

39. The Courts below should have: 1) referenced the underlying values of *both* the open courts principle and informational privacy; 2) considered the risks to these values in light of the contextual and influencing factors at play (*Dagenais/Mentuck* first stage); and 3) considered separately the salutary and deleterious effects on the parties and the public of each of the orders requested (*Dagenais/Mentuck* second stage).
40. The Court of Appeal however made two errors. It relied on pre-*Charter* jurisprudence to rule that to support requests for anonymity orders and publication bans, “public embarrassment or a stated interest in privacy is not sufficient” (para 73) and “subjective feelings of discomfort cannot be the test” (para 82).
41. This fails to accord the appellant’s privacy interests equivalent constitutional status to the open courts’ principle.
42. Two underlying privacy values are engaged here: 1) the appellant’s dignity, integrity and autonomy; and (2) the broader public interest in informational privacy.
43. The contextual factors are that the appellant is a vulnerable youth who is the innocent victim of a cyber-bully whom she seeks to hold accountable for actions harmful to her.

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<sup>36</sup> *Thomson Newspapers Co. v. Canada (Attorney General)*, [1998] 1 S.C.R. 877 at para. 116; See also *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199 at para. 137.

<sup>37</sup> *R. v. Mentuck*, [2001] 3 S.C.R. 442 at paras. 41 – 45.

44. The context is influenced by the information revolution brought about by internet technology. If she is required to identify herself publically in order to hold a cyber-bully accountable, a vulnerable and victimized teenager must accept the virtually unlimited distribution of false sexualized information attached to her name. This information will be available online, everywhere, for any purpose and forever.
45. Requiring publication of the appellant's identifying information in this context risks compromising her dignity, integrity and autonomy.
46. Protecting the appellant's identity is the only reasonable means of preventing these harms. Accordingly, the first prong of *Dagenais/Mentuck* is satisfied.
47. The first prong of the *Dagenais/Mentuck* test may also be satisfied by evidence that withholding the relief sought poses risks to the broader public interest in informational privacy. This is an aspect of the required analysis that both courts below ignored, focusing only on the risk to expressive freedoms.<sup>38</sup> In so doing, both lower courts erred.
48. The courts below made a second error. The appellant requested two distinct orders: permission to use a pseudonym and a partial publication ban. Under the second prong of *Dagenais/Mentuck* the courts below were required to, but did not assess each order sought separately on its own merits. Separate analysis could, and probably would have led to different outcomes for each order sought in light of the salutary and deleterious effects in each case.
49. Granting the appellant's request to use a pseudonym seems certain to yield significant salutary effects on privacy with limited deleterious effects on expressive freedoms.<sup>39</sup> A compelling public interest in knowing a fifteen year old's identity is unclear and was not established in evidence.

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<sup>38</sup> Court of Appeal, paras 92-3; LeBlanc J, para 37.

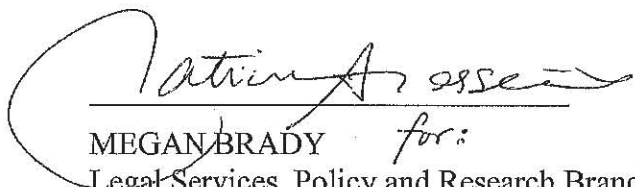
<sup>39</sup> *Canadian Newspapers Co. v. Canada (Attorney General)*, [1988] 2 S.C.R. 122 at para. 20; *Re: F.N.; F.N. (re)*, [2000] 1 S.C.R. 880 at para. 12; *R. v. Mentuck*, [2001] 3 S.C.R. 442 at para. 57; *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326 at para. 26; *Canadian Broadcasting Corp. v. New Brunswick (Attorney General) (Re R. v. Carson)*, [1996] 3 S.C.R. 480 at para. 84.

50. The appellant's request for a partial publication ban engages different privacy and expressive considerations. Neither lower court factored out this issue for a distinct analysis of the salutary and deleterious effects as required.
51. Instead, the motions Judge and Court of Appeal conflated the use of a pseudonym with a partial publication ban. Both were weighed together. Neither lower court considered, as required, whether a single order allowing the use of a pseudonym was justified.

#### **PART IV – ORDERS SOUGHT**

52. The Intervener requests orders allowing the appeal and remitting the matter to the motions judge for determination in accordance with these principles.
53. Intervener seeks no costs and requests that no costs be awarded against it. The Intervener requests permission to make brief oral submissions in support of its position.

All of which is respectfully submitted this 26<sup>th</sup> day of April, 2012.



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## PART V – LIST OF AUTHORITIES

<b>Caselaw</b>	<b>Para. cited</b>
<i>Aubry v. Editions Vice-Versa</i> , [1998] 1 S.C.R. 591.	12
<i>Canada (Canadian Human Rights Commission) v. Taylor</i> , [1990] 3 S.C.R. 892.	15
<i>Canadian Broadcasting Corp. v. Canada (Attorney General)</i> , [2011] 1 S.C.R. 19.	12, 15, 37
<i>Canadian Broadcasting Corp. v. New Brunswick (Attorney General) (Re R. v. Carson)</i> , [1996] 3 S.C.R. 480.	49
<i>Canadian Broadcasting Corp. v. The Queen</i> , [2011] 1 S.C.R. 65	12, 28
<i>Canadian Newspapers Co. v. Canada (Attorney General)</i> , [1988] 2 S.C.R. 122.	26, 49
<i>Dagenais v. Canadian Broadcasting Corp.</i> , [1994] 3 S.C.R. 835.	26, 35
<b>Book of authorities of the Applicants, Tab 10</b>	
<i>Edmonton Journal v. Alberta (Attorney General)</i> , [1989] 2 S.C.R. 1326.	5, 13, 28, 49
<i>Ford v. Quebec (Attorney General)</i> , [1988] 2 S.C.R. 712.	15
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<b>Book of authorities of the Applicants, Tab 17</b>	
<i>Hunter v. Southam Inc.</i> , [1984] 2 S.C.R. 145	5,
<i>Irwin Toy Ltd. v. Quebec (Attorney General)</i> , [1989] 1 S.C.R. 927.	15
<i>Lavigne v. Canada (Office of the Commissioner of Official Languages)</i> , [2002] 2 S.C.R. 773.	4, 8
<i>M.(A.) v. Ryan</i> , [1997] 1 S.C.R. 157.	5, 18
<i>Named Person v. Vancouver Sun</i> , [2007] 3 S.C.R. 253.	26
<i>Nova Scotia (Attorney General) v. MacIntyre</i> , [1982] 1 S.C.R. 175	28
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<i>R. v. Genest</i> , [1989] 1 S.C.R. 59	5

<i>R. v. Keegstra</i> , [1990] 3 S.C.R. 697.	15
<i>R. v. Mentuck</i> , [2001] 3 S.C.R. 442.	38, 49
<i>R. v. Mills</i> , [1999] 3 S.C.R. 668.	5, 10, 12, 18, 25, 28
<i>R. v. O'Connor</i> , [1995] 4 S.C.R. 411.	5, 12, 25
<i>R. v. Plant</i> , [1993] 3 S.C.R. 281	5
<i>R. v. R.C.</i> [2005] 3 S.C.R. 99.	28
<i>R v. Pan; R. v. Sawyer</i> , [2001] 2 S.C.R. 344.	26
<i>R. v. Seaboyer</i> , [1991] 2 S.C.R. 577.	26
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<i>R. v. Tessling</i> , [2004] 3 S.C.R. 432.	5, 6
<i>R. v. Tse</i> , [2012] S.C.J. No. 16.	21
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<i>RJR-MacDonald Inc. v. Canada (Attorney General)</i> , [1995] 3 S.C.R. 199.	30, 37
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<i>United States Department of Justice et al. v. Reporters Committee for Freedom of the Press</i> , 489 U.S. 749 (1989)	12
<i>Vancouver Sun (Re)</i> , [2004] 2 S.C.R. 332.	26
<i>Vickery v. Nova Scotia Supreme Court (Prothonotary)</i> , [1991] 1 S.C.R. 671	12, 25, 28
<b>Book of authorities of the Applicants, Tab 50</b>	

## PART VI – LIST OF STATUTES

<p style="text-align: center;"><b><i>Privacy Act, R.S.C. 1985, c. P-21.</i></b></p> <p style="text-align: center;">INTERPRETATION</p> <p><b>Definitions</b></p> <p>3. In this Act,</p> <p>“administrative purpose” « <i>fins administratives</i> »</p> <p style="padding-left: 40px;">“administrative purpose”, in relation to the use of personal information about an individual, means the use of that information in a decision making process that directly affects that individual;</p> <p>“alternative format” « <i>support de substitution</i> »</p> <p style="padding-left: 40px;">“alternative format”, with respect to personal information, means a format that allows a person with a sensory disability to read or listen to the personal information;</p> <p>“Court” « <i>Cour</i> »</p> <p style="padding-left: 40px;">“Court” means the Federal Court;</p> <p>“designated Minister” « <i>ministre désigné</i> »</p> <p style="padding-left: 40px;">“designated Minister” means a person who is designated as the Minister under subsection 3.1(1);</p> <p>“government institution” « <i>institution fédérale</i> »</p> <p style="padding-left: 40px;">“government institution” means</p> <p style="padding-left: 80px;">(a) any department or ministry of state of the Government of Canada, or any body</p>	<p style="text-align: center;"><b>Loi sur la protection des renseignements personnels, LRC 1985, c P-21</b></p> <p style="text-align: center;">DÉFINITIONS</p> <p><b>Définitions</b></p> <p>3. Les définitions qui suivent s’appliquent à la présente loi.</p> <p>« Commissaire à la protection de la vie privée » “<i>Privacy Commissioner</i>”</p> <p style="padding-left: 40px;">« Commissaire à la protection de la vie privée » Le commissaire nommé en vertu de l’article 53.</p> <p>« Cour » “<i>Court</i>”</p> <p style="padding-left: 40px;">« Cour » La Cour fédérale.</p> <p>« déficience sensorielle » “<i>sensory disability</i>”</p> <p style="padding-left: 40px;">« déficience sensorielle » Toute déficience liée à la vue ou à l’ouïe.</p> <p>« fichier de renseignements personnels » “<i>personal information bank</i>”</p> <p style="padding-left: 40px;">« fichier de renseignements personnels » Tout ensemble ou groupement de renseignements personnels défini à l’article 10.</p> <p>« fins administratives » “<i>administrative purpose</i>”</p> <p style="padding-left: 40px;">« fins administratives » Destination de l’usage de renseignements personnels concernant un individu dans le cadre d’une décision le touchant directement.</p> <p>« institution fédérale » “<i>government institution</i>”</p>
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<p>or office, listed in the schedule, and (b) any parent Crown corporation, and any wholly-owned subsidiary of such a corporation, within the meaning of section 83 of the <i>Financial Administration Act</i>;</p> <p>“head” « <i>responsable d’institution fédérale</i> »</p> <p>“head”, in respect of a government institution, means</p> <p>(a) in the case of a department or ministry of state, the member of the Queen’s Privy Council for Canada who presides over the department or ministry, or (b) in any other case, either the person designated under subsection 3.1(2) to be the head of the institution for the purposes of this Act or, if no such person is designated, the chief executive officer of the institution, whatever their title;</p> <p>“personal information” « <i>renseignements personnels</i> »</p> <p>“personal information” means information about an identifiable individual that is recorded in any form including, without restricting the generality of the foregoing,</p> <p>(a) information relating to the race, national or ethnic origin, colour, religion, age or marital status of the individual, (b) information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved, (c) any identifying number, symbol or other particular assigned to the individual, (d) the address, fingerprints or blood type of the individual, (e) the personal opinions or views of the individual except where they are about</p>	<p>« institution fédérale »</p> <p>a) Tout ministère ou département d’État relevant du gouvernement du Canada, ou tout organisme, figurant à l’annexe; b) toute société d’État mère ou filiale à cent pour cent d’une telle société, au sens de l’article 83 de la <i>Loi sur la gestion des finances publiques</i>.</p> <p>« ministre désigné » “<i>designated Minister</i>”</p> <p>« ministre désigné » Personne désignée à titre de ministre en vertu du paragraphe 3.1(1).</p> <p>« renseignements personnels » “<i>personal information</i>”</p> <p>« renseignements personnels » Les renseignements, quels que soient leur forme et leur support, concernant un individu identifiable, notamment :</p> <p>a) les renseignements relatifs à sa race, à son origine nationale ou ethnique, à sa couleur, à sa religion, à son âge ou à sa situation de famille; b) les renseignements relatifs à son éducation, à son dossier médical, à son casier judiciaire, à ses antécédents professionnels ou à des opérations financières auxquelles il a participé; c) tout numéro ou symbole, ou toute autre indication identificatrice, qui lui est propre; d) son adresse, ses empreintes digitales ou son groupe sanguin; e) ses opinions ou ses idées personnelles, à l’exclusion de celles qui portent sur un autre individu ou sur une proposition de subvention, de récompense ou de prix à octroyer à un autre individu par une institution fédérale, ou subdivision de celle-ci visée par règlement; f) toute correspondance de nature, implicitement ou explicitement, privée ou</p>
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another individual or about a proposal for a grant, an award or a prize to be made to another individual by a government institution or a part of a government institution specified in the regulations,

(f) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual,

(h) the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual by an institution or a part of an institution referred to in paragraph (e), but excluding the name of the other individual where it appears with the views or opinions of the other individual, and

(i) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual,

but, for the purposes of sections 7, 8 and 26 and section 19 of the *Access to Information Act*, does not include

(j) information about an individual who is or was an officer or employee of a government institution that relates to the position or functions of the individual including,

(i) the fact that the individual is or was an officer or employee of the government institution,

(ii) the title, business address and telephone number of the individual,

(iii) the classification, salary range and responsibilities of the position held by the individual,

(iv) the name of the individual on a document prepared by the individual in

confidentielle envoyée par lui à une institution fédérale, ainsi que les réponses de l'institution dans la mesure où elles révèlent le contenu de la correspondance de l'expéditeur;

g) les idées ou opinions d'autrui sur lui;

h) les idées ou opinions d'un autre individu qui portent sur une proposition de subvention, de récompense ou de prix à lui octroyer par une institution, ou subdivision de celle-ci, visée à l'alinéa e), à l'exclusion du nom de cet autre individu si ce nom est mentionné avec les idées ou opinions;

i) son nom lorsque celui-ci est mentionné avec d'autres renseignements personnels le concernant ou lorsque la seule divulgation du nom révélerait des renseignements à son sujet;

toutefois, il demeure entendu que, pour l'application des articles 7, 8 et 26, et de l'article 19 de la *Loi sur l'accès à l'information*, les renseignements personnels ne comprennent pas les renseignements concernant :

j) un cadre ou employé, actuel ou ancien, d'une institution fédérale et portant sur son poste ou ses fonctions, notamment :

(i) le fait même qu'il est ou a été employé par l'institution,

(ii) son titre et les adresse et numéro de téléphone de son lieu de travail,

(iii) la classification, l'éventail des salaires et les attributions de son poste,

(iv) son nom lorsque celui-ci figure sur un document qu'il a établi au cours de son emploi,

(v) les idées et opinions personnelles qu'il a exprimées au cours de son emploi;

k) un individu qui, au titre d'un contrat, assure ou a assuré la prestation de services à une institution fédérale et

<p>the course of employment, and  (v) the personal opinions or views of the individual given in the course of employment,  (k) information about an individual who is or was performing services under contract for a government institution that relates to the services performed, including the terms of the contract, the name of the individual and the opinions or views of the individual given in the course of the performance of those services,  (l) information relating to any discretionary benefit of a financial nature, including the granting of a licence or permit, conferred on an individual, including the name of the individual and the exact nature of the benefit, and  (m) information about an individual who has been dead for more than twenty years;</p> <p>“personal information bank”  « <i>fichier de renseignements personnels</i> »</p> <p>“personal information bank” means a collection or grouping of personal information described in section 10;</p> <p>“Privacy Commissioner”  « <i>Commissaire à la protection de la vie privée</i> »</p> <p>“Privacy Commissioner” means the Commissioner appointed under section 53;</p> <p>“sensory disability”  « <i>déficience sensorielle</i> »</p> <p>“sensory disability” means a disability that relates to sight or hearing.</p> <p>R.S., 1985, c. P-21, s. 3;  1992, c. 1, s. 144(F), c. 21, s. 34;  2002, c. 8, s. 183;  2006, c. 9, s. 181.</p>	<p>portant sur la nature de la prestation, notamment les conditions du contrat, le nom de l’individu ainsi que les idées et opinions personnelles qu’il a exprimées au cours de la prestation;  l) des avantages financiers facultatifs, notamment la délivrance d’un permis ou d’une licence accordés à un individu, y compris le nom de celui-ci et la nature précise de ces avantages;  m) un individu décédé depuis plus de vingt ans.</p> <p>« responsable d’institution fédérale »  “<i>head</i>”</p> <p>« responsable d’institution fédérale »</p> <p>a) Le membre du Conseil privé de la Reine pour le Canada sous l’autorité duquel est placé un ministère ou un département d’État;  b) la personne désignée en vertu du paragraphe 3.1(2) à titre de responsable, pour l’application de la présente loi, d’une institution fédérale autre que celles visées à l’alinéa a) ou, en l’absence d’une telle désignation, le premier dirigeant de l’institution, quel que soit son titre.</p> <p>« support de substitution »  “<i>alternative format</i>”</p> <p>« support de substitution » Tout support permettant à une personne ayant une déficience sensorielle de lire ou d’écouter des renseignements personnels.</p> <p>L.R. (1985), ch. P-21, art. 3;  1992, ch. 1, art. 144(F), ch. 21, art. 34;  2002, ch. 8, art. 183;  2006, ch. 9, art. 181.</p> <p><b>Précision</b></p> <p><b>3.01</b> (1) Il est entendu que toute disposition de la présente loi qui s’applique à une institution fédérale qui est une société d’État</p>
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<p><b>For greater certainty</b></p> <p><b>3.01</b> (1) For greater certainty, any provision of this Act that applies to a government institution that is a parent Crown corporation applies to any of its wholly-owned subsidiaries within the meaning of section 83 of the <i>Financial Administration Act</i>.</p> <p><b>For greater certainty</b></p> <p>(2) For greater certainty, the Canadian Race Relations Foundation and the Public Sector Pension Investment Board are parent Crown corporations for the purposes of this Act.</p> <p>2006, c. 9, s. 182.</p> <p>DESIGNATION</p> <p><b>Power to designate Minister</b></p> <p><b>3.1</b> (1) The Governor in Council may designate a member of the Queen’s Privy Council for Canada to be the Minister for the purposes of any provision of this Act.</p> <p><b>Power to designate head</b></p> <p>(2) The Governor in Council may, by order, designate a person to be the head of a government institution, other than a department or ministry of state, for the purposes of this Act.</p> <p>2006, c. 9, s. 182.</p> <p>COLLECTION, RETENTION AND DISPOSAL OF PERSONAL INFORMATION</p> <p><b>Collection of personal information</b></p> <p><b>4.</b> No personal information shall be collected by a government institution unless it relates directly to an operating program or activity of the institution.</p> <p>1980-81-82-83, c. 111, Sch. II “4”.</p>	<p>mère s’applique également à ses filiales à cent pour cent au sens de l’article 83 de la <i>Loi sur la gestion des finances publiques</i>.</p> <p><b>Précision</b></p> <p>(2) Il est entendu que la Fondation canadienne des relations raciales et l’Office d’investissement des régimes de pensions du secteur public sont des sociétés d’État mères pour l’application de la présente loi.</p> <p>2006, ch. 9, art. 182.</p> <p>DÉSIGNATION</p> <p><b>Désignation d’un ministre</b></p> <p><b>3.1</b> (1) Le gouverneur en conseil peut désigner tout membre du Conseil privé de la Reine pour le Canada à titre de ministre pour l’application de toute disposition de la présente loi.</p> <p><b>Désignation du responsable d’une institution fédérale</b></p> <p>(2) Il peut aussi désigner, par décret, toute personne à titre de responsable d’une institution fédérale — autre qu’un ministère ou un département d’État — pour l’application de la présente loi.</p> <p>2006, ch. 9, art. 182.</p> <p>COLLECTE, CONSERVATION ET RETRAIT DES RENSEIGNEMENTS PERSONNELS</p> <p><b>Collecte des renseignements personnels</b></p> <p><b>4.</b> Les seuls renseignements personnels que peut recueillir une institution fédérale sont ceux qui ont un lien direct avec ses programmes ou ses activités.</p> <p>1980-81-82-83, ch. 111, ann. II « 4 ».</p>
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### **Personal information to be collected directly**

5. (1) A government institution shall, wherever possible, collect personal information that is intended to be used for an administrative purpose directly from the individual to whom it relates except where the individual authorizes otherwise or where personal information may be disclosed to the institution under subsection 8(2).

#### **Individual to be informed of purpose**

(2) A government institution shall inform any individual from whom the institution collects personal information about the individual of the purpose for which the information is being collected.

#### **Exception**

(3) Subsections (1) and (2) do not apply where compliance therewith might

- (a) result in the collection of inaccurate information; or
- (b) defeat the purpose or prejudice the use for which information is collected.

1980-81-82-83, c. 111, Sch. II "5".

### **Disclosure of personal information**

8. (1) Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be disclosed by the institution except in accordance with this section.

#### **Where personal information may be disclosed**

(2) Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed

- (a) for the purpose for which the information was obtained or compiled by the

### **Origine des renseignements personnels**

5. (1) Une institution fédérale est tenue de recueillir auprès de l'individu lui-même, chaque fois que possible, les renseignements personnels destinés à des fins administratives le concernant, sauf autorisation contraire de l'individu ou autres cas d'autorisation prévus au paragraphe 8(2).

#### **Mise au courant de l'intéressé**

(2) Une institution fédérale est tenue d'informer l'individu auprès de qui elle recueille des renseignements personnels le concernant des fins auxquelles ils sont destinés.

#### **Exceptions**

(3) Les paragraphes (1) et (2) ne s'appliquent pas dans les cas où leur observation risquerait :

- a) soit d'avoir pour résultat la collecte de renseignements inexacts;
- b) soit de contrarier les fins ou de compromettre l'usage auxquels les renseignements sont destinés.

1980-81-82-83, ch. 111, ann. II « 5 ».

### **Communication des renseignements personnels**

8. (1) Les renseignements personnels qui relèvent d'une institution fédérale ne peuvent être communiqués, à défaut du consentement de l'individu qu'ils concernent, que conformément au présent article.

#### **Cas d'autorisation**

(2) Sous réserve d'autres lois fédérales, la communication des renseignements personnels qui relèvent d'une institution fédérale est autorisée dans les cas suivants :

- a) communication aux fins auxquelles ils ont été recueillis ou préparés par l'institution ou pour les usages qui sont



<p>institution or for a use consistent with that purpose;</p> <p>(b) for any purpose in accordance with any Act of Parliament or any regulation made thereunder that authorizes its disclosure;</p> <p>(c) for the purpose of complying with a subpoena or warrant issued or order made by a court, person or body with jurisdiction to compel the production of information or for the purpose of complying with rules of court relating to the production of information;</p> <p>(d) to the Attorney General of Canada for use in legal proceedings involving the Crown in right of Canada or the Government of Canada;</p> <p>(e) to an investigative body specified in the regulations, on the written request of the body, for the purpose of enforcing any law of Canada or a province or carrying out a lawful investigation, if the request specifies the purpose and describes the information to be disclosed;</p> <p>(f) under an agreement or arrangement between the Government of Canada or an institution thereof and the government of a province, the council of the Westbank First Nation, the council of a participating First Nation — as defined in subsection 2(1) of the <i>First Nations Jurisdiction over Education in British Columbia Act</i> —, the government of a foreign state, an international organization of states or an international organization established by the governments of states, or any institution of any such government or organization, for the purpose of administering or enforcing any law or carrying out a lawful investigation;</p> <p>(g) to a member of Parliament for the purpose of assisting the individual to whom the information relates in resolving a problem;</p> <p>(h) to officers or employees of the institution for internal audit purposes, or to the office of the Comptroller General or any other person or body specified in the regulations for audit purposes;</p> <p>(i) to the Library and Archives of Canada for archival purposes;</p> <p>(j) to any person or body for</p>	<p>compatibles avec ces fins;</p> <p>b) communication aux fins qui sont conformes avec les lois fédérales ou ceux de leurs règlements qui autorisent cette communication;</p> <p>c) communication exigée par <i>subpoena</i>, mandat ou ordonnance d'un tribunal, d'une personne ou d'un organisme ayant le pouvoir de contraindre à la production de renseignements ou exigée par des règles de procédure se rapportant à la production de renseignements;</p> <p>d) communication au procureur général du Canada pour usage dans des poursuites judiciaires intéressant la Couronne du chef du Canada ou le gouvernement fédéral;</p> <p>e) communication à un organisme d'enquête déterminé par règlement et qui en fait la demande par écrit, en vue de faire respecter des lois fédérales ou provinciales ou pour la tenue d'enquêtes licites, pourvu que la demande précise les fins auxquelles les renseignements sont destinés et la nature des renseignements demandés;</p> <p>f) communication aux termes d'accords ou d'ententes conclus d'une part entre le gouvernement du Canada ou l'un de ses organismes et, d'autre part, le gouvernement d'une province ou d'un État étranger, une organisation internationale d'États ou de gouvernements, le conseil de la première nation de Westbank, le conseil de la première nation participante — au sens du paragraphe 2(1) de la <i>Loi sur la compétence des premières nations en matière d'éducation en Colombie-Britannique</i> — ou l'un de leurs organismes, en vue de l'application des lois ou pour la tenue d'enquêtes licites;</p> <p>g) communication à un parlementaire fédéral en vue d'aider l'individu concerné par les renseignements à résoudre un problème;</p> <p>h) communication pour vérification interne au personnel de l'institution ou pour vérification comptable au bureau du contrôleur général ou à toute personne ou tout organisme déterminé par règlement;</p>
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research or statistical purposes if the head of the government institution

(i) is satisfied that the purpose for which the information is disclosed cannot reasonably be accomplished unless the information is provided in a form that would identify the individual to whom it relates, and  
(ii) obtains from the person or body a written undertaking that no subsequent disclosure of the information will be made in a form that could reasonably be expected to identify the individual to whom it relates;

(k) to any aboriginal government, association of aboriginal people, Indian band, government institution or part thereof, or to any person acting on behalf of such government, association, band, institution or part thereof, for the purpose of researching or validating the claims, disputes or grievances of any of the aboriginal peoples of Canada;

(l) to any government institution for the purpose of locating an individual in order to collect a debt owing to Her Majesty in right of Canada by that individual or make a payment owing to that individual by Her Majesty in right of Canada; and

(m) for any purpose where, in the opinion of the head of the institution,

(i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure, or

(ii) disclosure would clearly benefit the individual to whom the information relates.

#### **Personal information disclosed by Library and Archives of Canada**

(3) Subject to any other Act of Parliament, personal information under the custody or control of the Library and Archives of Canada that has been transferred there by a government institution for historical or archival purposes may be disclosed in accordance with the regulations to any person or body for research or statistical

i) communication à Bibliothèque et Archives du Canada pour dépôt;

j) communication à toute personne ou à tout organisme, pour des travaux de recherche ou de statistique, pourvu que soient réalisées les deux conditions suivantes :

(i) le responsable de l'institution est convaincu que les fins auxquelles les renseignements sont communiqués ne peuvent être normalement atteintes que si les renseignements sont donnés sous une forme qui permette d'identifier l'individu qu'ils concernent,

(ii) la personne ou l'organisme s'engage par écrit auprès du responsable de l'institution à s'abstenir de toute communication ultérieure des renseignements tant que leur forme risque vraisemblablement de permettre l'identification de l'individu qu'ils concernent;

k) communication à tout gouvernement autochtone, association d'autochtones, bande d'Indiens, institution fédérale ou subdivision de celle-ci, ou à leur représentant, en vue de l'établissement des droits des peuples autochtones ou du règlement de leurs griefs;

l) communication à toute institution fédérale en vue de joindre un débiteur ou un créancier de Sa Majesté du chef du Canada et de recouvrer ou d'acquitter la créance;

m) communication à toute autre fin dans les cas où, de l'avis du responsable de l'institution :

(i) des raisons d'intérêt public justifieraient nettement une éventuelle violation de la vie privée,

(ii) l'individu concerné en tirerait un avantage certain.

#### **Communication par Bibliothèque et Archives du Canada**

(3) Sous réserve des autres lois fédérales, les renseignements personnels qui relèvent de Bibliothèque et Archives du Canada et qui y ont été versés pour dépôt ou à des fins historiques

purposes.

**Copies of requests under paragraph (2)(e) to be retained**

(4) The head of a government institution shall retain a copy of every request received by the government institution under paragraph (2)(e) for such period of time as may be prescribed by regulation, shall keep a record of any information disclosed pursuant to the request for such period of time as may be prescribed by regulation and shall, on the request of the Privacy Commissioner, make those copies and records available to the Privacy Commissioner.

**Notice of disclosure under paragraph (2)(m)**

(5) The head of a government institution shall notify the Privacy Commissioner in writing of any disclosure of personal information under paragraph (2)(m) prior to the disclosure where reasonably practicable or in any other case forthwith on the disclosure, and the Privacy Commissioner may, if the Commissioner deems it appropriate, notify the individual to whom the information relates of the disclosure.

**Definition of “Indian band”**

(6) In paragraph (2)(k), “Indian band” means

- (a) a band, as defined in the *Indian Act*;
- (b) a band, as defined in the *Cree-Naskapi (of Quebec) Act*, chapter 18 of the Statutes of Canada, 1984;
- (c) the Band, as defined in the *Sechelt Indian Band Self-Government Act*, chapter 27 of the Statutes of Canada, 1986; or
- (d) a first nation named in Schedule II to the *Yukon First Nations Self-Government Act*.

**Definition of “aboriginal government”**

(7) The expression “aboriginal government” in

par une institution fédérale peuvent être communiqués conformément aux règlements pour des travaux de recherche ou de statistique.

**Copie des demandes faites en vertu de l’al. (2)e**

(4) Le responsable d’une institution fédérale conserve, pendant la période prévue par les règlements, une copie des demandes reçues par l’institution en vertu de l’alinéa (2)e) ainsi qu’une mention des renseignements communiqués et, sur demande, met cette copie et cette mention à la disposition du Commissaire à la protection de la vie privée.

**Avis de communication dans le cas de l’al. (2)m**

(5) Dans le cas prévu à l’alinéa (2)m), le responsable de l’institution fédérale concernée donne un préavis écrit de la communication des renseignements personnels au Commissaire à la protection de la vie privée si les circonstances le justifient; sinon, il en avise par écrit le Commissaire immédiatement après la communication. La décision de mettre au courant l’individu concerné est laissée à l’appréciation du Commissaire.

**Définition de « bande d’Indiens »**

(6) L’expression « bande d’Indiens » à l’alinéa (2)k) désigne :

- a) soit une bande au sens de la *Loi sur les Indiens*;
- b) soit une bande au sens de la *Loi sur les Cris et les Naskapis du Québec*, chapitre 18 des Statuts du Canada de 1984;
- c) soit la bande au sens de la *Loi sur l’autonomie gouvernementale de la bande indienne sechelte*, chapitre 27 des Statuts du Canada de 1986;
- d) la première nation dont le nom figure à l’annexe II de la *Loi sur l’autonomie gouvernementale des premières nations du*

<p>paragraph (2)(k) means</p> <p>(a) Nisga'a Government, as defined in the Nisga'a Final Agreement given effect by the <i>Nisga'a Final Agreement Act</i>;</p> <p>(b) the council of the Westbank First Nation;</p> <p>(c) the Tlicho Government, as defined in section 2 of the <i>Tlicho Land Claims and Self-Government Act</i>;</p> <p>(d) the Nunatsiavut Government, as defined in section 2 of the <i>Labrador Inuit Land Claims Agreement Act</i>;</p> <p>(e) the council of a participating First Nation as defined in subsection 2(1) of the <i>First Nations Jurisdiction over Education in British Columbia Act</i>;</p> <p>(f) the Tsawwassen Government, as defined in subsection 2(2) of the <i>Tsawwassen First Nation Final Agreement Act</i>; or</p> <p>(g) a Maanulth Government, within the meaning of subsection 2(2) of the <i>Maanulth First Nations Final Agreement Act</i>.</p> <p>Definition of "council of the Westbank First Nation"</p> <p>(8) The expression "council of the Westbank First Nation" in paragraphs (2)(f) and (7)(b) means the council, as defined in the Westbank First Nation Self-Government Agreement given effect by the <i>Westbank First Nation Self-Government Act</i>.</p> <p>R.S., 1985, c. P-21, s. 8;  R.S., 1985, c. 20 (2nd Supp.), s. 13, c. 1 (3rd Supp.), s. 12;  1994, c. 35, s. 39;  2000, c. 7, s. 26;  2004, c. 11, s. 37, c. 17, s. 18;  2005, c. 1, ss. 106, 109, c. 27, ss. 21, 25;  2006, c. 10, s. 33;  2008, c. 32, s. 30;  2009, c. 18, s. 23.</p>	<p><i>Yukon.</i></p> <p>Définition de « gouvernement autochtone »</p> <p>(7) L'expression « gouvernement autochtone » à l'alinéa (2)k) s'entend :</p> <p>a) du gouvernement nisga'a, au sens de l'Accord définitif nisga'a mis en vigueur par la <i>Loi sur l'Accord définitif nisga'a</i>;</p> <p>b) du conseil de la première nation de Westbank;</p> <p>c) du gouvernement tlicho, au sens de l'article 2 de la <i>Loi sur les revendications territoriales et l'autonomie gouvernementale du peuple tlicho</i>;</p> <p>d) du gouvernement nunatsiavut, au sens de l'article 2 de la <i>Loi sur l'Accord sur les revendications territoriales des Inuit du Labrador</i>;</p> <p>e) du conseil de la première nation participante, au sens du paragraphe 2(1) de la <i>Loi sur la compétence des premières nations en matière d'éducation en Colombie-Britannique</i>;</p> <p>f) du gouvernement tsawwassen, au sens du paragraphe 2(2) de la <i>Loi sur l'accord définitif concernant la Première Nation de Tsawwassen</i>;</p> <p>g) de tout gouvernement maanulth, au sens du paragraphe 2(2) de la <i>Loi sur l'accord définitif concernant les premières nations maanulthes</i>.</p> <p>Définition de « conseil de la première nation de Westbank »</p> <p>(8) L'expression « conseil de la première nation de Westbank » aux alinéas (2)f) et (7)b) s'entend du conseil au sens de l'Accord d'autonomie gouvernementale de la première nation de Westbank mis en vigueur par la <i>Loi sur l'autonomie gouvernementale de la première nation de Westbank</i>.</p> <p>L.R. (1985), ch. P-21, art. 8;  L.R. (1985), ch. 20 (2<sup>e</sup> suppl.), art. 13, ch. 1 (3<sup>e</sup> suppl.), art. 12;  1994, ch. 35, art. 39;</p>
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	<p>2000, ch. 7, art. 26; 2004, ch. 11, art. 37, ch. 17, art. 18; 2005, ch. 1, art. 106 et 109, ch. 27, art. 21 et 25; 2006, ch. 10, art. 33; 2008, ch. 32, art. 30; 2009, ch. 18, art. 23.</p>
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