

## CBA NATIONAL PRIVACY AND ACCESS LAW SECTION MEETING

To: Lia Daborn, Canadian Bar Association, New Brunswick Branch  
Date: March 24, 2010  
From: Heather M. Hobart  
Re: CBA National Privacy and Access Law Section Meeting

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On Thursday, February 11, and Friday, February 12, 2010, I attended the CBA National Privacy and Access Law Section Meeting in Ottawa. In addition to the business parts of the meeting, representatives from the Information Commissioner's Office and the Privacy Commissioner's Office met with members of the Section.

Three cases were discussed where leave to appeal to the Supreme Court of Canada has been granted.

Two issues were addressed in Canada (*Information Commissioner v. Canada (Minister of National Defence)* 2009 F.C.A. 181 (Leave to Appeal granted [2009] S.C.C.A. No. 337)). The first issue was whether information found in the Prime Minister's Agenda was subject to disclosure under the provisions of the *Access to Information Act*, R.S.C. 1985, c. A-1. The second issue is whether the Prime Minister is an officer or employee of a government institution for the purposes of the *Privacy Act*, R.S.C. 1985, c. P-21. The Federal Court concluded at paragraph 8 that the Prime Minister was not an officer of a government institution and stated as follows:

The same understanding about the special governmental role of the Prime Minister would have formed part of the foundation for the drafting of the *Privacy Act*. It follows, in my view, that if Parliament had intended the Prime Minister to be treated as an "officer" of the PCO for the purposes of the *Privacy Act*, it would have said so expressly. It also follows that it would be inconsistent with the intention of Parliament to interpret the *Privacy Act* in a way that would include the Prime Minister within the scope of the phrase "officer of a government institution" as used in paragraph (j) of the definition of "personal information" in section 3 of the *Privacy Act*.

In the second case, *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, [2009] F.C.A. 175, (leave to appeal granted [2009] S.C.C.A. No. 335) the court considered whether the Prime Minister's office falls within the definition of "government institution" and in what circumstances does a record that is physically located in the office of the Prime Minister or a Minister fall under the control of the government institution?

***Statham v. Canadian Broadcasting Corp.***, [2009] F.C.J. No. 1253 was also discussed. Statham made 400 requests for access to information just after the CBC became subject to Canada's access to information legislation. CBC failed to acknowledge the requests within the 30 day time frame and as a result all requests were deemed to have been refused. The Information Commissioner entered into an agreement with the CBC to respond to the requests and provide disclosure by April 29, 2009. In March of 2008 Statham applied for judicial review. At the time of the hearing the requests had been responded to. The Court found that the application was premature and the Applicant could not apply to the Court while the CBC was still within the time frame set by the Commissioner.

Privacy issues relating to litigation will be addressed at the CBA conference in Niagara Falls on August 13<sup>th</sup> to 17<sup>th</sup>, 2010. In the fall of 2010 the National Privacy and Access Law Section will hold a conference in Ottawa addressing issues relating to privacy and access to information.



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