Federal Court  Cour fédérale

Date: 20140303

Docket: T-92-13

Citation: 2014 FC 205

Ottawa, Ontario, March 3, 2014

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

THE INFORMATION COMMISSIONER OF CANADA

Applicant

and

THE MINISTER OF NATIONAL DEFENCE

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This application for judicial review relates to a request for records made on December 9, 2010 by a requester pursuant to the *Access to Information Act*, RSC 1985, c A-1 (the "Act"). The requester sought information from the Department of National Defence ["DND"]. The Minister of National Defence claimed that an extension of time of more than three years was needed to provide the records.

[2] The applicant, the Information Commissioner of Canada, now seeks a declaration that the respondent, the Minister of National Defence, has failed to give access to the records requested under the Act within the time limits set out in the Act and is, therefore, deemed to have refused to give access to the requested information. The applicant submits that the extension of time claimed by the respondent was not reasonable and is invalid; as a result, the respondent did not comply with the requirement to provide the records within the statutory time period of 30 days and this amounts to a deemed refusal. The applicant also seeks an order directing the respondent to respond to the request and provide the requested records within 30 days of this judgment, subject to exemptions under the Act.

[3] On September 11, 2013 the respondent provided the applicant with the requested records, with some redactions. The respondent then brought a motion to strike the application on the grounds that it is now moot.

[4] The applicant submits that the application is not moot and alternatively, if it is technically moot because the requested records have recently been provided, the relief sought in the application should still be considered because a determination of the issue will guide the conduct of the Department of National Defence and other Government institutions in the future with respect to claimed extensions of time.

[5] This application raises important issues about the access to information regime including the challenges that arise in respecting the rights of those who seek access and are entitled to access, subject to the permitted exemptions, and the operational and other obligations of Government

departments that must gather, assess, consult, redact and ultimately provide the records. Moreover, the applicant seeks a remedy in this Court which is not currently provided in the legislation.

[6] To balance these considerations, the Act allows Government departments to claim an extension of time to provide the requested records. This application highlights that there will be situations where Government departments claim extensions of time that appear to be completely unreasonable and excessive, that do not meet the needs of the requester, and that defeat the overall goals of the Act. However, the Information Commissioner's powers to encourage compliance with the provisions and overall goals of the Act are limited to recommendations and reports to heads of departments, which may do little to address the concerns of the individual requester seeking speedy access to information.

[7] The remedies sought by the Information Commissioner raise policy issues that should be addressed by the Government with the input of relevant stakeholders. Any decision by this Court in the context of this application would have broader implications government-wide and the Court should be wary of determining such issues without the input of those that would be affected.

[8] For the reasons provided below, the Court will exercise its discretion to hear the application. However, the applicant can not obtain the relief she seeks on this application and the application must be dismissed. Despite this outcome, the applicant has effectively highlighted that the remedies for non-compliance with the Act are limited and that legislative change would be the only way to provide more options and remedies.

The Background

[9] On December 9, 2010, a requester sought access to records from DND regarding a DND contract involving Smith Consulting Group ["SCG"], Billy P. Smith, and the sale of surplus military assets to Uruguay.

[10] On February 3, 2011, pursuant to correspondence from DND, Mr Smith and SCG provided their consent to the release of personal and third party information to the requester, who was their lawyer.

[11] On March 4, 2011, DND informed the requester that:

- Fees would be charged for processing the request and that the request would not be processed until such time as the requester confirmed his continued interest in obtaining the records and paid a deposit of 50% of the estimated fee, about $250.
- It would claim an extension of time of 1,110 days – three years and 15 days – beyond the initial statutory time limit of responding to the request, "due to the volume of records" (section 9(1)(a) of the Act) and to "complete the necessary consultations" (section 9(1)(b) of the Act). After this time extension, DND's due date for responding to the request would be on or about March 19, 2014.

[12] On March 11, 2011, the requester paid the deposit and informed DND by letter that it intended to file a complaint with the Information Commissioner regarding the 1,110 day extension.

[13] On March 29, 2011, the Information Commissioner provided notice of her intention to investigate. During the course of investigation, DND provided further details on the time extension: a 230-day extension was claimed pursuant to paragraph 9(1)(a) of the Act due to the large number of records involved, and a 880-day extension was claimed pursuant to paragraph 9(1)(b) of the Act to complete the necessary consultations.

[14] By March 30, 2012, DND had not begun its consultations with other government institutions.

[15] In May 2012, the applicant sought and obtained written representations from DND regarding DND's extension of time. The Director of Access to Information and Privacy of DND (the "ATIP Director") responded with the following information:

- after an initial review, 1000 pages of duplicate information were removed leaving 2400 pages to be reviewed and consulted;
- with respect to the subsection 4(2.1) of the Act (i.e. the Duty to Assist), the provision of timely access is based on what is reasonable in the circumstances. In these circumstances, DND had the discretion to determine the length of the extension (Canada, Treasury Board Secretariat, *Directive on the Administration of the Access to Information Act*, at Appendix C "Principles for assisting applicants");
- in estimating the length of an extension, DND undergoes an initial review of the documents and considers many possible variables, including previous experiences, sensitivity of the information and current workload;

- part of the file needed to be reviewed by the Department of Foreign Affairs and International Trade ["DFAIT"] and Public Works and Government Services Canada ["PWGSC"], and that the DFAIT review could potentially involve mandatory consultation with foreign governments;
- DND had consulted with the Department of Justice ["DOJ"] and was told that the whole file needed to be reviewed for matters regarding solicitor-client and litigation privilege; and
- DND's access to information unit had experienced a major and unprecedented software malfunction.

[16] DND sent the relevant records to other departments for consultation on July 9, 2012. DOJ and PWGSC responded by August 15, 2012, sooner than DND had anticipated. DFAIT responded by August 31, 2012, indicating that it would require a further 120 days to respond, that is, until November 2012.

[17] On October 18, 2012, the applicant wrote to the respondent to report the results of her investigation. The applicant informed the respondent that DND had failed to meet its duty to assist, as set out in subsection 4(2.1) of the Act, and particularly that it had not made every effort to process the request in a timely manner. The applicant also found that DND had not provided justification for the claimed extensions of time; in so doing, the applicant found that the second criteria set out in paragraph 9(1)(a) of the Act was not met. Moreover, the applicant found that DND had not provided any explanation for the discrepancy between the initial estimate (880 days) and actual time required (approximately 160 days) for the consultation.

[18] The applicant advised the respondent that the extensions of time had not been justified; the extension sought under paragraph 9(1)(a) had not been met and the extension of 880 days sought under 9(1)(b) was not reasonable and both were therefore invalid. The applicant concluded that because the extensions were not valid, the response date remained March 4, 2011, which was the statutory time period to respond of 30 days, and since no response had been received at that time, DND was in a state of deemed refusal.

[19] The applicant recommended that the respondent commit to respond to the request by no later than February 28, 2013, 90 days after DFAIT was expected to respond to the consultation request.

[20] On November 6, 2012, the ATIP Director informed the applicant that DND could not commit to adhere to the applicant's recommendations because the requisite consultations were external and beyond its control, but promised to make every effort to provide the records by that date. The ATIP Director also noted that DND takes its responsibilities under the Act very seriously.

[21] On December 18, 2012, the requester authorized the applicant to initiate an application for review to the Federal Court pursuant to paragraph 42(1)(a) of the Act.

The Remedy sought by the Information Commissioner

[22] The applicant seeks:

- A Declaration that the respondent has failed to give access to the requested records within the time limits set out in the Act and is therefore deemed to have refused to give access to the requested information; and,
- An Order directing the respondent to respond to the request within 30 days of judgment.

[23] The applicant agrees that because the documents were provided on September 11, 2013, the Order directing the respondent to provide the documents is moot, but submits that the issue of the declaratory relief is not moot.

The preliminary issue: Iis the application moot?

[24] On September 26, 2013, the respondent filed its motion to dismiss the application on the ground that it is moot.

[25] The respondent submits that because DND has provided the records requested with some exemptions, the factual foundation for the litigation has disappeared and that there is no longer a live controversy between the parties. The respondent further submits that there are no special circumstances which would justify the Court exercising its discretion to hear the application.

[26] The respondent submits that the test established in *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342, 57 DLR (4th) 231 [*Borowski*] has not been met.

[27] The respondent notes that there is no ongoing refusal of access because the requested documents have been provided. The respondent also submits that there is no live controversy

between the parties because the only complaint made by the requester and investigated by the Information Commissioner [IC] was about the claimed extension of time, which is not reviewable under the Act. The issue of declaratory relief, which the respondent submits is not a justiciable issue, does not re-establish a live controversy between the parties. The respondent argues that the declaration sought by the IC will have no practical effect for the requester because the requester has now received the records.

[28] In addition, the respondent submits that the declaratory relief would stray into matters that should be addressed by legislators and the Court should avoid such intrusion, particularly on moot issues.

[29] The respondent argues that only refusals to provide the records are reviewable by this Court not claimed extensions of time. Complaints regarding claimed extensions of time may result in reports to Ministers and recommendations for timely compliance – but that is as far as the legislation goes.

[30] The respondent argues that the Information Commissioner's interest in pursuing this application has little to do with the requester's interests but focuses on institutional interests. The respondent questions whether this is a proper use of the judicial review power, noting that section 42 requires the consent of the requester for judicial review and such consent does not permit the requester to raise hypothetical issues. Rather such issues, which may also engage the interests of other intervenors, would be better addressed in a reference to the Court pursuant to section 18.3 of the *Federal Courts Act*. The respondent suggests that this is a disguised reference case by the

applicant with the goal of inviting the Court to redraft or reinterpret the statutory provisions and that the applicant should have brought a reference pursuant to section 18.3.

[31] The applicant, responding to the motion for mootness, submits that the issues she has raised in the application must be fully considered to provide the context to determine if the issues are moot, and if they are found to be moot, to determine whether the Court should exercise its discretion to hear the application.

[32] The applicant frames the issues as: what constitutes an unreasonable extension of time; whether an unreasonable extension can give rise to a deemed refusal; whether judicial review pursuant to sections 41 or 42 of the Act can be taken of an unreasonable extension of time before that claimed extension has lapsed; and, what is the scope of the respondent's duty to assist as it relates to the timeliness of responses to access to information requests.

[33] The applicant submits that the two-step approach and the factors established in *Borowski* support hearing the application: the Court must determine if a concrete dispute has ceased to exist and if the dispute has ceased to exist, the Court must consider whether to exercise its discretion to hear the application.

[34] The applicant agrees that part of the relief requested is moot since the requester has now received the records. However, a declaration of whether the records were provided in compliance with the Act and whether the claimed extension of time was unreasonable and, therefore, invalid

and, as a result, constituted a deemed refusal, would have a practical effect on this case and in future cases.

[35] Alternatively, the applicant argues that even if the application for declaratory relief is moot, the Court should exercise its discretion to hear the application. The applicant submits that there is a sufficient adversarial context, as both the applicant and respondent have fully argued all the relevant issues and will continue to have an ongoing interest in these issues, given that access to information requests will continue to be made to the respondent, as well as to other departments and agencies. As these issues are bound to recur and their resolution will have a practical effect on the rights of requesters, they are issues of public importance. Moreover, the resolution of these issues is important to the effective functioning of the access to information system as a whole.

[36] The applicant emphasizes that if the Court does not exercise its discretion to hear the application, the requester in this case, and other requesters in similar circumstances, who allege that their right to timely access under the Act is infringed, will be denied an effective remedy. The applicant notes that the Act permits the responding Government institution to control the timing of the response, i.e. to set the time extension. Even though the requester in the present case has now received the sought after records, he has been denied timely access.

[37] The applicant further submits that these issues are evasive of review. Where the Commissioner investigates a complaint about an unreasonable extension of time and then seeks judicial review, the records may be provided before the judicial review is heard. Although the requester may ultimately receive the requested records, the requester is denied timely access and has

no recourse. If the Court does not hear this application, DND and other departments could continue to claim long extensions of time, contrary to the spirit of the Act and, in particular, section 9 of the Act, without any opportunity for the Court to review the validity of such extensions.

[38] With respect to the respondent's argument that the Court does not have jurisdiction to review an extension of time until that extension has lapsed and has resulted in a deemed refusal, the applicant notes that this is the central issue and argues that the jurisprudence has been inconsistent and that the issue should be resolved.

[39] The applicant also submits that the application raises issues of statutory interpretation which are appropriate for the Court to deal with.

The Court will exercise its discretion to hear the application

[40] As noted in the chronology, the requester has waited a long time to receive the records.

[41] The requester filed his request in December 2010 and, after some communications regarding the fees required, DND acknowledged the request in February 2011. In March 2011, DND claimed an extension of time of three years and 15 days to provide the records. The requester then complained to the applicant. The applicant investigated and reported to the respondent in October 2012, however, the respondent could not commit to adhere to the recommendations and to provide the requested records by the date recommended, February, 28, 2013. As a result, the applicant sought judicial review. Memoranda of Law were drafted and filed and the judicial review was scheduled. Less than a month before the scheduled hearing date, the respondent provided the

records. Less than two weeks before the scheduled hearing date the respondent brought its motion to strike the application. Should the compliance of the respondent at this late day render the application moot?

[42] If the Court has the jurisdiction to consider deemed refusals based on unreasonable extensions of time claimed by Government departments, that remedy would be thwarted by departments that provide the requested records at any time up to the eve of the hearing date and then assert mootness on the application for judicial review.

[43] Both parties agree that the test for determining mootness is established by the Supreme Court of Canada in *Borowski* at para 15, "[t]he general principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the court will have no practical effect on such rights, the court will decline to decide the case." The Supreme Court noted that, if after the commencement of the proceeding, "events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot."

[44] The Supreme Court set out a two-step approach to determine whether a case is moot. First, the Court must determine whether the required tangible and concrete dispute has disappeared and the issues have become hypothetical or academic. If so, then the Court must determine whether, despite that the dispute has disappeared, or despite the lack of a "live controversy", it should exercise its discretion to hear the case. The Court also set out the factors to be considered in determining whether to exercise the discretion; an adversarial context; concern for judicial economy

and the conservation of judicial resources; and, the need of the Court to respect its role as the adjudicative branch and not stray into the role of the legislative branch.

[45] In *Ficek v Canada (Attorney General)*, 2013 FC 430, 2013 DTC 5115 [*Ficek*], Justice Phelan found that the Court should exercise its discretion in favour of hearing the application where the issues raised would otherwise be evasive of review. Many of the considerations in *Ficek*, *supra* at paras 13-16, 20-21, 29, are relevant to the present circumstances:

> [13] However, the situation in which the Applicant finds herself is one which can happen often and in many different situations. An applicant claims that the government has breached the law, and the applicant has been affected by such breach. Prior to the matter being adjudicated or post- adjudication but prior to a court decision, government rectifies the breach and then claims that the dispute is moot. Whatever rights an applicant may have had have been trammelled, but no remedy is available.
>
> [14] This situation facing this Applicant is slightly more complicated because there is the real prospect of future harm as assessments will be due for other years and there is no indication that the policy at issue has or will be changed. While the past alleged wrong is over, a future wrong may occur.
>
> [15] In my view, these circumstances do not make the controversy less moot or more alive. The proper place for considerations of this nature are in the second prong of the *Borowski* test – the exercise of the Court's discretion.
>
> A similar view, expressed in the context of a tax case where at the time of hearing the debt was paid and the liens lifted, occurred in *Danada Enterprises Ltd v Canada (Attorney General)*, 2012 FC 403, 407 FTR 268.
>
> [16] The live controversy about the interpretation and application of the assessment powers for the 2010 tax year, which is at the heart of the dispute, is academic, particularly as the declaratory relief was an adjunct to the principal relief of *mandamus*.
>
> […]

> [20] With regard to the second criterion, that of judicial economy, three factors are relevant, as discussed in *Borowski*:
>
> - is the issue sensitive and evasive of review?
> - would the "social cost" of leaving an issue of public or national importance undecided justify the Court's intervention?
> - would a decision have some practical effect on the rights of the parties even though it would have no effect on the now moot controversy that led to the litigation?
>
> [21] The issue is certainly sensitive and has broad impact. It has shown itself to be evasive of review. As referred to earlier by the Court, review after the offending conduct has stopped becomes difficult because it allows the "offending" party to cure and avoid judicial scrutiny.
>
> […]
>
> [29] The final criterion – the role of the Court – is one to which the Court is sensitive. The Respondent's suggestion that it is not for the Court to go about issuing legal opinions ignores the Court's role in this case which is to engage in statutory interpretation on a given set of facts. There is no issue of the Court straying into areas of executive or legislative policy. However, if the Applicant is correct, a local office fiat could run counter to the legislated duty of the Minister to assess "with all due dispatch".

[46] The factors set out in *Borowski*, when applied to the circumstances of this case, favour the Court exercising its discretion to hear the application.

[47] One part of the application is clearly moot since the records have been provided. However, other issues remain live, particularly whether a claimed extension of time can be found to be unreasonable and, therefore, invalid, leading to a deemed refusal which can then be judicially reviewed. While the resolution of these issues may not have a practical effect on the parties to this application, and to that extent, could be considered moot, they will have a practical effect on other

requesters and the respondent, as well as other Government departments and agencies in the future. Regardless, there is justification for the Court to exercise its discretion to hear the application.

[48] As in *Ficek*, if the Court does not hear the application, the issues raised are evasive of review. The respondent may have made its best efforts to provide the requested records as soon as possible, as it promised to do in its response to the applicant in November 2012. But the reality is that the records were delivered shortly before the hearing date and the motion to strike the application on the grounds of mootness was made less than two weeks before the hearing date. From the perspective of the requester, he did not receive the records in a "timely" manner; not in the time frame he may have desired or needed for whatever purpose the records were sought.

[49] The motion can not be considered in a vacuum. The Court has considered the issues raised by the parties in the application. The parties have fully argued all the issues in both the motion to strike the application and the application itself. As a result, the concern for judicial resources is to some extent theoretical given that judicial resources have already been expended. It would seem to be more of a waste of resources to not consider the application at this stage.

[50] I also agree with the applicant that the issues are likely to arise again and that these are important issues to highlight how to give effect to the spirit of the access to information regime. Certainly, these are not new issues and, although the applicant suggests that the law is not settled, the Court has consistently addressed its limited jurisdiction to review true refusals.

[51] The resolution of the issues, to the extent it adds to the jurisprudence, will have some practical effect and justifies the Court's consideration.

[52] There is no risk that the Court will stray into areas reserved for Parliament. The issues are primarily about statutory interpretation. While the applicant may invite the Court to interpret the provisions broadly to expand the powers of the Information Commissioner, any statutory changes must come from Parliament. The Court cannot redraft the legislation.

[53] Finally, I do not agree with the respondent's argument that, in determining whether the application is moot, the Court should consider whether the applicant should have brought a reference to the Court pursuant to section 18.3 of the *Federal Courts Act* rather than an application for judicial review.

[54] Section 18.3 provides:

18.3 (1) A federal board, commission or other tribunal may at any stage of its proceedings refer any question or issue of law, of jurisdiction or of practice and procedure to the Federal Court for hearing and determination.	**18.3 (1) Les offices fédéraux peuvent, à tout stade de leurs procédures, renvoyer devant la Cour fédérale pour audition et jugement toute question de droit, de compétence ou de pratique et procédure.**
(2) The Attorney General of Canada may, at any stage of the proceedings of a federal board, commission or other tribunal, other than a service tribunal within the meaning of the *National Defence Act*, refer any question or issue of	**(2) Le procureur général du Canada peut, à tout stade des procédures d'un office fédéral, sauf s'il s'agit d'un tribunal militaire au sens de la Loi sur la défense nationale, renvoyer devant la Cour fédérale pour audition**

the constitutional validity, applicability or operability of an Act of Parliament or of regulations made under an Act of Parliament to the Federal Court for hearing and determination.	**et jugement toute question portant sur la validité, l'applicabilité ou l'effet, sur le plan constitutionnel, d'une loi fédérale ou de ses textes d'application.**

[55] The respondent contends that a reference pursuant to section 18.3 is a preferable approach to address the issues that the applicant has raised in her application, particularly regarding the declaratory relief sought. However, this argument was not raised in the respondent's written submissions and understandably put the applicant at a disadvantage with respect to a reply. I also note that the respondent did not cite any case law regarding the reference power.

[56] With respect to the applicant's choice of procedure, it must be remembered that the applicant launched the application many months before the requested records were provided. The respondent has only raised the notion of a reference at the oral hearing.

[57] Moreover, the respondent's assertion of section 18.3 as the better approach is not an answer, in the present circumstances, to whether the Court should exercise its discretion to hear the application. As explored in detail below, whether as a reference or an application, the issues raised by the parties are policy issues that may require legislative change, which is the domain of Parliament. In addition, the respondent has not provided any guidance to the Court about whether such issues would even be appropriate for a reference or whether the respondent would support that approach if it were pursued in the future.

[58] The Court has, therefore, considered the application on its merits.

The Issues

[59] The applicant seeks a declaration that the respondent has failed to provide access to the requested records within the time limits set out in the Act and is deemed to have refused access. The applicant's request for an Order directing the respondent to respond to the request and to provide the records within 30 days of the judgment is now moot.

[60] The key issues are:

1. Whether the Court has jurisdiction pursuant to section 42 to hear this application? and,
2. If so, whether the claimed extension of time was reasonable?

[61] To reiterate, the applicant has raised several underlying issues: what constitutes an unreasonable extension of time; can an unreasonable extension constitute a deemed refusal; can judicial review pursuant to sections 41 or 42 be taken of an unreasonable extension of time (as found by the Information Commissioner) before that claimed extension has lapsed; and, what is the scope of the respondent's duty to assist as it relates to the timeliness of responses to access to information requests.

The Access to Information Regime

[62] The relevant provisions of the Act are set out in the Annex but are summarized here for context.

[63] The Act sets out its purpose in section 2. Section 6 governs how requests for records shall be made.

[64] Under section 7 of the Act, the head of the government institution to which the request is made has, subject to sections 8-10, 30 days after the request is received to give notice to the requester whether or not access to the record, or part thereof, will be given and if so, to provide the records.

[65] Section 9 of the Act allows the head of a Government institution to extend the time limit set out in section 7 "for a reasonable period of time, having regard to the circumstances" if there are a large number of records and if meeting the 30 day initial time limit would interfere with the operations of the department, or if consultations are required which cannot be completed within that period, or if notice of the request is required to be given to a third party pursuant to subsection 27(1).

[66] Section 10 governs refusals to give access to the records and subsection 10(3) provides that where the records are not provided within the time limits set out in this act, the head of the institution is deemed to have refused to give access. In other words, where there is no outright notice of refusal, if the requested records are not provided within 30 days or within the period of time claimed as an extension under section 9, there is a deemed refusal.

[67] Section 30 governs complaints, i.e. who can bring a complaint and on what grounds.

[68] Sections 32-36 govern investigations by the Information Commissioner, including the requirements to notify the Government institution, determine its procedure, the privacy of complaints, and the opportunity for those affected to make submissions.

[69] Section 37 sets out the powers of the Information Commissioner regarding the results or findings of its investigation. The Information Commissioner may report her findings to the Government institution, make recommendations, and request a response. She must also report to the requester and provide the requester's response of the impugned Government institution.

[70] Section 38 requires the Information Commissioner to provide an Annual Report to Parliament. The Information Commissioner may also submit Special Reports pursuant to section 39 on matters within the scope of its powers, particularly on matters of importance that should not wait until the next Annual Report to be highlighted.

[71] Sections 41 and 42 provide that the requester who has been refused access or the Information Commissioner, following an investigation, may apply to the Court for review of a refusal.

[72] In 2006, the Act was amended to add subsection 4(2.1) to impose a duty on the head of the institution to assist a requester, including to provide "timely" access to the requested record.

[73] The Information Commissioner has no authority to make any orders.

[74] For example, the Information Commissioner has no authority to "cure" a deemed refusal of access by granting any extension of time to a Government institution to respond to an access request. As the Court held in *Statham v Canadian Broadcasting Corporation*, 2010 FCA 315 at para 49, [2012] 2 FCR 421:

> 49 To conclude on this point, the Act confers no authority on the Commissioner to "cure" a deemed refusal of access by granting any extension of time to a government institution to respond to an access request.

[75] Judicial review is the only way the Information Commissioner can encourage compliance and is limited to refusals to disclose or to provide access to a requested record.

Interpreting the Act

[76] The applicant submits that timely access is an important overarching principle of the Act which can be ignored or thwarted if the head of the Government department may claim an extension of time of no matter what length, unless there is jurisdiction in this Court to review the reasonableness of that extension or to find that it is invalid and constitutes a deemed refusal.

[77] The applicant submits that the Act is to be given a liberal and purposive interpretation. The applicant notes the jurisprudence that has established the quasi-constitutional nature of the right of access to information, given that the right enables citizens to have the information required to participate meaningfully in the democratic process (*Canada (Information Commissioner) v Canada (Minister of National Defence)*, 2011 SCC 25 at para 40, [2011] 2 SCR 306 [*MND*]; *Ontario (Public Safety and Security) v Criminal Lawyers' Association*, 2010 SCC 23 at para 30, [2010] 1

SCR 815; *Canada (Attorney General) v Canada (Information Commissioner)*, 2004 FC 431 at paras 19, 255 FTR 56).

[78] The applicant submits, therefore, that where there are two interpretations open to the Court, it must interpret the provision in a manner that least infringes the public's right to access (*Rubin v Canada (Minister of Transport*), [1998] 2 FC 430 at para 23, 154 DLR (4th) 414 [*Rubin*]; *Canada (Privacy Commissioner) v Canada (Labour Relations Board)*, [1996] 3 FC 609 at para 47, 118 FTR 1 (FCTD)).

[79] The respondent acknowledges the quasi-constitutional nature of the Act but submits that it must be interpreted in accordance with the usual principles of statutory interpretation (*MND, supra* at para 40; *Lavigne v Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53 at para 25, [2002] 2 SCR 773).

The statutory language is clear

[80] I agree that the Act should be interpreted in accordance with general principles of statutory interpretation. In *MND, supra* at para 40, the Supreme Court stated:

> 40 […] While I agree that the *Access to Information Act* may be considered quasi-constitutional in nature, thus highlighting its important purpose, this does not alter the general principles of statutory interpretation. The fundamental difficulty with the Commissioner's approach to the interpretation of the term "government institution" is that she avoids any direct reference to the legislative provision at issue. The Court cannot disregard the actual words chosen by Parliament and rewrite the legislation to accord with its own view of how the legislative purpose could be better promoted.

[81] If the language of a statute permits more than one interpretation, the Court will choose the interpretation that least infringes on the right to access to information (*Rubin, supra* at para 23). However, the Court must respect the language of the Act and cannot redraft or reinterpret the provisions to reach its own view of how the purpose could be better served.

[82] In *Rubin, supra* at paras 24, the Court considered the nature of an exemption under the Act and remarked that:

> It is important to emphasize that this does not mean that the Court is to re-draft the exemptions found in the Act in order to create more narrow exemptions. A court must always work within the language it has been given. If the meaning is plain, it is not for this Court, or any other court, to alter it. Where, however, there is ambiguity within a section, that is, it is open to two interpretations (as paragraph 16(1)(c) is here), then this Court must, given the presence of section 2, choose the interpretation that infringes on the public's stated right to access to information contained in section4 of the Act the least.

[83] This reflects the oft cited principle that the "words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (*Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 at para 21, 154 DLR (4th) 193). Section 2(1) sets out the object of the Act as "to provide a right of access to information […] in accordance with the principles that government information should be available to the public […]".

[84] Section 4 addresses the right to access and now includes a specific provision imposing a duty on the head of the institution to "[…] make every reasonable effort to assist the person in

connection with the request […] and, subject to the regulations, provide timely access to the record in the format requested."

[85] There is no definition of "timely" in the Act. The Oxford Dictionary defines timely as "done or occurring at a favourable or useful time; opportune". Such a definition begs the question of timely from whose perspective.

[86] The reference to timely access does not create any ambiguities with other provisions of the Act which would call for an interpretation of those provisions in a manner that least infringes access. The provision for timely access is qualified by "make every reasonable effort to…" What is timely will depend on what is reasonable in the circumstances. The statutory language throughout the Act is clear and the various provisions must be read to work together.

Does the Court have Jurisdiction under Section 42 of the Act to Hear the Judicial Review?

[87] The applicant's position is that the Court has jurisdiction because there is a deemed refusal to provide the records pursuant to subsection 10(3) of the Act. The applicant submits that the jurisprudence is inconsistent, but has not foreclosed the finding that an unreasonable extension of time can be invalid and can constitute a deemed refusal.

[88] The applicant referred to cases where courts have found, or in the applicant's view, were willing to find, a deemed refusal. The applicant referred to *Public Service Alliance of Canada v Canada (Attorney General)*, 2011 FC 649 at para 23, 391 FTR 28 [*PSAC*], as an example of the Court's willingness to find that an extension of time could amount to a deemed refusal, except in

that case, the Crown did not concede that there had been an unreasonable extension of time which amounted to a deemed refusal and the Information Commissioner found the extension of time in issue to be reasonable. The applicant submits that the present case can be distinguished because the Information Commissioner found the claimed extension of time to be unreasonable.

[89] The applicant also relies on *Canada (Information Commissioner) v Canada (Minister of External Affairs)* (1988), 18 FTR 278, 32 Admin LR 265 (FC) and *Canada (Information Commissioner) v Canada (Minister of External Affairs)*, [1990] 3 FC 514, 3 TCT 5297 [collectively, *External Affairs*]. In the first case, which dealt with an interlocutory motion to dismiss the application, Associate Chief Justice Jerome noted at para 19, that "[w]here the application is based on an allegedly unauthorized extension under s. 9 … it is inescapable that the Court must be able to review the extension itself and the reasons given therefor". In the second case, which is the application itself, Justice Muldoon concluded that the extension of time invoked was not justified under section 9 of the Act and, therefore, amounted to a deemed refusal.

[90] The applicant argues that *X v Canada (Minister of National Defence)* (1990), 41 FTR 16, [1990] FCJ No 540 (FC) [*X1*] and *X v Canada (Minister of National Defence)*, [1991] 1 FC 670, 41 FTR 73 (FC) [*X2*] should be distinguished. In these cases, the Court concluded that it did not have jurisdiction over applications brought pursuant to the Act where there had been no refusal of access at the time of the applications. In *X1*, the Government institution had claimed an extension but failed to provide the requested records within that extended period. It was therefore deemed to have refused to give access. It later provided the requested records but the requester pursued the matter, first complaining about the deemed refusal to the Information Commissioner and then proceeding

with an application to the Federal Court. In *X2*, the facts were similar except that the Government institution disclosed the requested records well in advance of the expiration of the extension of time. The applicant submits that *X1* and *X2* apply only in cases where access to the requested records has been granted before the applications. The applicant also argues that in *X2*, the Court did not consider the issue of whether an invalid extension of time was reasonable, or was a deemed refusal.

[91] The applicant also argues that an important distinguishing factor between the pre-2006 jurisprudence and the present case is the addition of subsection 4(2.1), which imposes a duty to assist requesters and to make every reasonable effort to provide timely access to requested records.

[92] The respondent submits that an extension of time, found by the Information Commissioner to be unreasonable, does not equate with a refusal of access. The respondent relies on the jurisprudence which has noted that the Court is not responsible to "second-guess" whether an extension claimed under subsection 9(1) is reasonable (*PSAC, supra* at paras 21-22; *X2, supra* at para 8).

[93] The respondent's position is that there can be no deemed refusal and no judicial review by the Court until the time period for providing the requested records has passed.

[94] The respondent also relies on *Canada (Attorney General) v Canada (Information Commissioner)*, 2002 FCT 136, 216 FTR 274 [*Attorney General*], noting that in that case, the Government institution claimed an extension of three years because 270000 pages of documents were requested. Justice Kelen set aside subpoenas issued by the Information Commissioner and

adopted the analysis in *X1* and *X2*, concluding that there can be no deemed refusal until the expiration of the extended time limit.

[95] The respondent submits that the decisions in *External Affairs* can be distinguished: the applications were brought after the extension periods claimed under section 9 had expired; the Crown conceded that an unauthorized extension under section 9(1) can amount to a deemed refusal, which is the very point at issue in the present case; and, the reasoning in *External Affairs* has not been followed in subsequent cases.

[96] The respondent also notes the clearly different wording of section 30 regarding complaints and sections 41 and 42 regarding judicial review. Under section 30, the Act explicitly empowers the Information Commissioner to receive and investigate complaints from persons who "consider the extension [claimed pursuant to section 9] unreasonable", whereas sections 41 and 42 do not mention claimed extensions of time. The respondent argues that if Parliament had intended to provide for review regarding extensions of time, it would have explicitly so provided, rather than providing only for complaints to be made and investigated.

An extension of time does not constitute deemed refusal

[97] A claimed extension of time, even though the Information Commissioner has found it to be unreasonable, does not constitute a deemed refusal of access.

[98] *PSAC* is determinative. Very similar arguments were made by *PSAC* and the same jurisprudence was relied on. *PSAC* sought information related to the development of the *Public*

Sector Equitable Compensation Act. The original request would have required a five year extension to respond, and one of the subsequent smaller requests led to a claimed extension of 760 days (25 months).

[99] In *PSAC, supra* at paras 21-24, Justice Beaudry considered and rejected the applicant's arguments, and found that:

> 21 In my view, there can be no refusal and therefore no review pursuant to section 41 of the Act until the deadline for processing a request has passed. The language of the Act clearly limits this Court's jurisdiction to the review of refusals, whether actual or deemed, and leaves no room for the review of extensions. As this Court found in *Attorney General*, at para 25:
>
> > [25] Parliament has clearly provided for "deemed refusals" in section 10(3) but not elsewhere in the Act. A "deemed refusal" is when the department fails to give access to the record within the time limits set out in the Act, i.e. either 30 days as provided in section 7 or an extended time limit under section 9. In my opinion, in this case, the extended time limit has not expired so that there can be no "deemed refusal" to give access.
>
> 22 I am further persuaded by the reasoning in X in which the Court found at paragraph 13 that, except where there is an ongoing refusal of access, "it is not the role of the Court to immerse itself in the reasonability of the conduct of the internal affairs of a government department."
>
> 23 I acknowledge that the decisions in *External Affairs* support the applicant's case, but I am not persuaded by them. In *External Affairs* the Crown conceded that an unreasonable extension amounted to a deemed refusal. No such concession has been made here, and in any event the Commissioner has found that the extension in the instant application was reasonable. Therefore, I am unable to find that the extension amounts to a deemed refusal that would give me jurisdiction to hear this application.
>
> 24 If, as the applicant argues, no response is received by the conclusion of the extension, the applicant can complain to the

> Commissioner. However, there has not yet been a refusal and, as such, the Court does not now have the jurisdiction to decide the merits of this application.

[100] As noted above, the applicant takes a different interpretation of *PSAC* and seeks to distinguish it on the basis that, in the present case, the Information Commissioner found the claimed extension to be unreasonable, whereas in *PSAC*, the Information Commissioner did not make such a finding. The applicant also points to paragraph 23, where Justice Beaudry acknowledged the contrary decisions in *External Affairs*.

[101] I do not agree that this is a basis to distinguish *PSAC* from the present case. There is no footing to argue that the jurisprudence is inconsistent and that the door remains open to find that an unreasonable extension can be a deemed refusal. Justice Beaudry very clearly stated that based on the language of the statute and the relevant case law, that there can be no deemed refusal under the Act until the time period has expired. This addresses the same argument advanced by the applicant in the present case.

[102] The same issue that is before the Court in the present case was also directly addressed by the Court in *Attorney General*, where Justice Kelen concluded that a deemed refusal under subsection 10(3) occurs only when a Government institution fails to give access to the record within the time limits set out in the Act. The Court held, at paras 26-27:

> […] In the case at bar, the time limit for giving access has been extended to three years and that time period has not yet passed. Accordingly, there is no "deemed refusal to give access" since the government institution has not refused to give access within the extended time limit.
>
> […]

> In *X v. Canada*, supra, the time period had been extended to 270 days, and the Court held until the extended time period expires, there is no "deemed refusal". Justice Strayer held that the Federal Court does not have the responsibility to "second-guess" whether the extension is reasonable. The respondent has the power to receive and investigate a complaint that an extension of time is not reasonable. But the respondent does not have power beyond reporting his findings and recommendations with respect to the reasonableness of the extension.

[103] Contrary to the applicant's submission that *Attorney General* does not apply to the present case because it involved an application that was not brought pursuant to the Act but was brought pursuant to section 18.1 of the *Federal Court Acts*, the Court considered, as a question of law, the interpretation of section 10(3) of the Act.

[104] These cases make it clear that there is no uncertainty in the case law and its interpretation of the Act.

[105] In addition, I agree with the respondent that on basic principles of statutory interpretation, the difference between section 30 and sections 41 and 42 signals Parliament's clear intention that requesters may complain about claimed extensions and the Information Commissioner may investigate the complaint, but that is the extent of the recourse.

[106] Subsection 30(1) provides that a person may make a complaint where they believe that an extension of time claimed pursuant to section 9 is unreasonable and the Information Commissioner shall receive and investigate that complaint. In contrast, section 41 permits review by the Federal

Court only where a person "has been *refused access* to a record requested under this Act or a part thereof" [emphasis added].

[107] The conclusion that this Court has no jurisdiction to hear the present application pursuant to section 42 of the Act because a claimed extension of time, although found to be unreasonable by the Information Commissioner after an investigation, is not a deemed refusal under section 10(3) of the Act, unfortunately does not advance the interests that the Information Commissioner seeks to champion on behalf of requesters.

[108] The Information Commissioner has very effectively highlighted the limitations on its ability to ensure compliance with the Act on behalf of persons who request information and are entitled to information, subject to exemptions.

[109] Where the Information Commissioner investigates a complaint about a claimed extension of time, all that can be done, if the extension is found to be unreasonable, is to make recommendations to the head of the Government institution and to rely on the Annual Reports, and where appropriate, a Special Report to focus attention on the issue and encourage better compliance in future cases. There is no way to provide a remedy to the requester where the requester does not receive the records requested within a reasonable period of time or to meet the specific needs of the requester who likely sought the records for a particular purpose, which may be thwarted by a long delay.

[110] The related issue is whether an extension is reasonable and who can make this determination. The department responding to the request seems to hold all the cards in terms of

establishing the time extension needed. The fact that not meeting the time limit claimed will be a deemed refusal, may encourage Departments to err on the side of caution with the hope that they can provide the requested records sooner. Whether departments should have the ability to seek further extensions where necessary could add uncertainty for the requester and doesn't address the lack of any remedy to challenge the claimed extension.

[111] Although a three year extension may be unreasonable from the perspective of the requester, when all the circumstances are considered, it may be reasonable. However, five or ten year extensions may completely defeat the goals of the Act and may be *prima facie* unreasonable, yet there remains no recourse to address such extensions.

[112] The consequence of the applicant's position that an unreasonable extension is invalid would mean that in the present case, the failure to provide the records within the 30 day period, even though the respondent claimed a three year extension, results in a deemed refusal and would permit judicial review of the refusal to provide access. This would not necessarily speed up the provision of records to the requester and the Court will not be best placed to determine what the appropriate time to comply would be. Moreover, the respondent would be faced with responding to the judicial review while at the same time responding to the access request which may duplicate efforts and spread resources even thinner.

Was the extension claimed reasonable (and if not reasonable, was it invalid)?

[113] The applicant's position is that the extension claimed did not comply with section 9 and as a result, is an invalid extension.

[114] The applicant relies on *Attaran v Canada (Minister of Foreign Affairs)*, 2011 FCA 182, 420 NR 315 for its position that the respondent must exercise its discretion to claim an extension in accordance with the provision granting it that power, and it did not do so.

> [17] As stated by the Supreme Court in *Criminal Lawyers' Association* at paragraph 46, a discretion conferred by statute must be exercised consistently with the purposes underlying its grant. This is consistent with *Telezone* where this Court stated, at paragraph 47, "when the Act confers on the head of a government institution a discretion to refuse to disclose an exempted record, the lawfulness of its exercise is reviewed on the grounds normally available in administrative law for the review of administrative discretion, including unreasonableness." One ground of administrative review is that a discretion conferred by statute must be exercised within the boundaries imposed by the statute. See: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at paragraph 56. Thus, the parties do not dispute that this Court may intervene if the respondent did not consider the exercise of discretion.

[115] The applicant submits that Government institutions cannot be permitted to claim never-ending or excessively long extensions and remain immune from review.

[116] The applicant argues that DND failed to show that the extension of time met the criteria of reasonableness under paragraph 9(1)(a) of the Act; although the volume of the information is large, DND did not explain how processing the request would interfere with its operations. In addition, DND failed to show that the extension of time was reasonable pursuant to paragraph 9(1)(b) of the Act; DND did not explain how 880 days could be a reasonable period of time. The applicant also notes that DND grossly overestimated the time required.

[117] The applicant also submits that DND failed to consider relevant considerations including the purpose of the Act and considered irrelevant factors, including that any extension of time would be unchangeable once claimed.

[118] The respondent reiterates that the Court does not have jurisdiction to hear the application, but argues that the extensions claimed pursuant to paragraphs 9(a) and (b) of the Act were reasonable.

[119] The respondent submits that DND clearly advised the applicant of all the circumstances justifying the need for the extension, including the number of documents, the need for DND to do the initial review and identify which documents would be sent out to other departments for consultation, that the 880 day extension was based on past practice and the number of pages in the current request, and that consultations with other departments and other countries would be needed given the nature of the information.

[120] The respondent notes that the submissions of the ATIP Director elaborated on the explanation indicating that many variables were considered including previous experience with similar types of requests, the workload of the responsible analyst, the need to review the documents with respect to litigation and solicitor client privilege and, again, the need for consultations, perhaps more than once.

[121] The respondent also noted that the institution only has 30 days to: assess the time it anticipates will be needed to respond to a request and whether external consultations are necessary;

and, estimate how long those external consultations may take. Once the institution commits to a time period, it cannot change the date or it will face being put in a deemed refusal situation. Therefore, it is reasonable for an institution to consider potential causes of delay at an early stage.

No need to determine if the extension is reasonable

[122] Because the Court has no jurisdiction to consider the application pursuant to section 41 or 42 of the Act, it need not consider whether the extension claimed is reasonable.

[123] As the applicant noted, the discretion to claim the extension must be exercised within the statutory boundaries. In the present case, the respondent provided a rationale pursuant to paragraphs 9(a) and (b). It was guided by the statutory provision in estimating the time needed. The applicant disagrees that the explanations or rationale provided is reasonable. However, that issue is not reviewable.

[124] As noted above, assessments of what is reasonable generally require consideration of the circumstances. A three year delay may be reasonable for some requests to some Government institutions and not to others. The Information Commissioner may not always be well-placed to determine whether an extension is reasonable; the Information Commissioner needs a full appreciation of the circumstances of the respondent.

[125] As noted in *PSAC, supra* at para 21 and the other cases referred to, the Court should not second guess whether an extension is reasonable.

[126] Departments responding to access to information requests cannot forego their core responsibilities to devote resources to process access to information requests for thousands of pages to meet short and possibly unrealistic and impossible deadlines. The gathering of documents, review by responsible officers, consultation with other departments, identification of exemptions, re-review, and possible additional consultation takes time.

[127] Departments must comply with the Act and to do so, they rely on claimed extensions. If compliance within the 30 day period, rather than within a claimed extended time period, is to be a priority, then sufficient resources must be available to departments. Other policy considerations highlight the need for the Act to be considered with the input of all stakeholders.

Costs

[128] The respondent seeks costs on the motion to strike the application and on the application.

[129] Given that the respondent was not successful on the motion to strike, it follows that it will not have its costs on the motion.

[130] With respect to the application, I agree with the applicant that the interests she has raised are important and are in the public interest. Although the applicant has not been successful in her application, an award of costs against the applicant is not appropriate.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No costs are awarded.

"Catherine M. Kane"
Judge

ANNEX

The relevant provisions of the *Access to Information Act*

The purpose of the Act is outlined in subsection 2(1):

2. (1) The purpose of this Act is to extend the present laws of Canada to provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, that necessary exceptions to the right of access should be limited and specific and that decisions on the disclosure of government information should be reviewed independently of government.	**2.** (1) La présente loi a pour objet d'élargir l'accès aux documents de l'administration fédérale en consacrant le principe du droit du public à leur communication, les exceptions indispensables à ce droit étant précises et limitées et les décisions quant à la communication étant susceptibles de recours indépendants du pouvoir exécutif.
[…]	[…]
4. (2.1) The head of a government institution shall, without regard to the identity of a person making a request for access to a record under the control of the institution, make every reasonable effort to assist the person in connection with the request, respond to the request accurately and completely and, subject to the regulations, provide timely access to the record in the format requested.	**4.** (2.1) Le responsable de l'institution fédérale fait tous les efforts raisonnables, sans égard à l'identité de la personne qui fait ou s'apprête à faire une demande, pour lui prêter toute l'assistance indiquée, donner suite à sa demande de façon précise et complète et, sous réserve des règlements, lui communiquer le document en temps utile sur le support demandé.
[…]	[…]
7. Where access to a record is requested under this Act, the head of the government institution to which the request is made shall, subject to sections 8, 9 and 11, within thirty days after the request is received,	**7.** Le responsable de l'institution fédérale à qui est faite une demande de communication de document est tenu, dans les trente jours suivant sa réception, sous réserve des articles 8, 9 et 11 :
(*a*) give written notice to the person who made the request as to whether or not access to the record or a part thereof will be given; and	*a*) d'aviser par écrit la personne qui a fait la demande de ce qu'il sera donné ou non communication totale ou partielle du document;
(*b*) if access is to be given, give the person	*b*) le cas échéant, de donner communication

who made the request access to the record or part thereof.

totale ou partielle du document.

[…]

[…]

9. (1) The head of a government institution may extend the time limit set out in section 7 or subsection 8(1) in respect of a request under this Act for a reasonable period of time, having regard to the circumstances, if

9. (1) Le responsable d'une institution fédérale peut proroger le délai mentionné à l'article 7 ou au paragraphe 8(1) d'une période que justifient les circonstances dans les cas où :

(*a*) the request is for a large number of records or necessitates a search through a large number of records and meeting the original time limit would unreasonably interfere with the operations of the government institution,

a) l'observation du délai entraverait de façon sérieuse le fonctionnement de l'institution en raison soit du grand nombre de documents demandés, soit de l'ampleur des recherches à effectuer pour donner suite à la demande;

(*b*) consultations are necessary to comply with the request that cannot reasonably be completed within the original time limit, or

b) les consultations nécessaires pour donner suite à la demande rendraient pratiquement impossible l'observation du délai;

(*c*) notice of the request is given pursuant to subsection 27(1)

c) avis de la demande a été donné en vertu du paragraphe 27(1).

by giving notice of the extension and, in the circumstances set out in paragraph (*a*) or (*b*), the length of the extension, to the person who made the request within thirty days after the request is received, which notice shall contain a statement that the person has a right to make a complaint to the Information Commissioner about the extension.

Dans l'un ou l'autre des cas prévus aux alinéas *a*), *b*) et *c*), le responsable de l'institution fédérale envoie à la personne qui a fait la demande, dans les trente jours suivant sa réception, un avis de prorogation de délai, en lui faisant part de son droit de déposer une plainte à ce propos auprès du Commissaire à l'information; dans les cas prévus aux alinéas *a*) et *b*), il lui fait aussi part du nouveau délai.

(2) Where the head of a government institution extends a time limit under subsection (1) for more than thirty days, the head of the institution shall give notice of the extension to the Information Commissioner at the same time as notice is given under subsection (1).

(2) Dans les cas où la prorogation de délai visée au paragraphe (1) dépasse trente jours, le responsable de l'institution fédérale en avise en même temps le Commissaire à l'information et la personne qui a fait la demande.

A refusal may be "deemed" pursuant to subsection 10(3). The plain wording of the statute suggests that a "deemed refusal" occurs when the head of the institution fails to give access to the record within the time limits set out in the Act – either the 30 days as provided in section 7, or an extended time limit under section 9 (*Statham v Canadian Broadcasting Corp*, 2010 FCA 315 at paras 58-60 [*Statham*]).

10. (3) Where the head of a government institution fails to give access to a record requested under this Act or a part thereof within the time limits set out in this Act, the head of the institution shall, for the purposes of this Act, be deemed to have refused to give access.	**10.** (3) Le défaut de communication totale ou partielle d'un document dans les délais prévus par la présente loi vaut décision de refus de communication.
[…]	[…]
30. (1) Subject to this Act, the Information Commissioner shall receive and investigate complaints	**30.** (1) Sous réserve des autres dispositions de la présente loi, le Commissaire à l'information reçoit les plaintes et fait enquête sur les plaintes :
(*a*) from persons who have been refused access to a record requested under this Act or a part thereof;	a) déposées par des personnes qui se sont vu refuser la communication totale ou partielle d'un document qu'elles ont demandé en vertu de la présente loi;
(*b*) from persons who have been required to pay an amount under section 11 that they consider unreasonable;	b) déposées par des personnes qui considèrent comme excessif le montant réclamé en vertu de l'article 11;
(*c*) from persons who have requested access to records in respect of which time limits have been extended pursuant to section 9 where they consider the extension unreasonable;	c) déposées par des personnes qui ont demandé des documents dont les délais de communication ont été prorogés en vertu de l'article 9 et qui considèrent la prorogation comme abusive;
(*d*) from persons who have not been given access to a record or a part thereof in the official language requested by the person under subsection 12(2), or have not been given access in that language within a period of time that they consider appropriate;	d) déposées par des personnes qui se sont vu refuser la traduction visée au paragraphe 12(2) ou qui considèrent comme contre-indiqué le délai de communication relatif à la traduction;
(*d.1*) from persons who have not been given access to a record or a part thereof in an alternative format pursuant to a request made	d.1) déposées par des personnes qui se sont vu refuser la communication des documents ou des parties en cause sur un support de

under subsection 12(3), or have not been given such access within a period of time that they consider appropriate;

(*e*) in respect of any publication or bulletin referred to in section 5; or

(*f*) in respect of any other matter relating to requesting or obtaining access to records under this Act.

(2) Nothing in this Act precludes the Information Commissioner from receiving and investigating complaints of a nature described in subsection (1) that are submitted by a person authorized by the complainant to act on behalf of the complainant, and a reference to a complainant in any other section includes a reference to a person so authorized.

(3) Where the Information Commissioner is satisfied that there are reasonable grounds to investigate a matter relating to requesting or obtaining access to records under this Act, the Commissioner may initiate a complaint in respect thereof.

[…]

41. Any person who has been refused access to a record requested under this Act or a part thereof may, if a complaint has been made to the Information Commissioner in respect of the refusal, apply to the Court for a review of the matter within forty-five days after the time the results of an investigation of the complaint by the Information Commissioner are reported to the complainant under subsection 37(2) or within such further time as the Court may, either before or after the expiration of those forty-five days, fix or allow.

substitution au titre du paragraphe 12(3) ou qui considèrent comme contre-indiqué le délai de communication relatif au transfert;

e) portant sur le répertoire ou le bulletin visés à l'article 5;

f) portant sur toute autre question relative à la demande ou à l'obtention de documents en vertu de la présente loi.

(2) Le Commissaire à l'information peut recevoir les plaintes visées au paragraphe (1) par l'intermédiaire d'un représentant du plaignant. Dans les autres articles de la présente loi, les dispositions qui concernent le plaignant concernent également son représentant.

(3) Le Commissaire à l'information peut lui-même prendre l'initiative d'une plainte s'il a des motifs raisonnables de croire qu'une enquête devrait être menée sur une question relative à la demande ou à l'obtention de documents en vertu de la présente loi.

[…]

41. La personne qui s'est vu refuser communication totale ou partielle d'un document demandé en vertu de la présente loi et qui a déposé ou fait déposer une plainte à ce sujet devant le Commissaire à l'information peut, dans un délai de quarante-cinq jours suivant le compte rendu du Commissaire prévu au paragraphe 37(2), exercer un recours en révision de la décision de refus devant la Cour. La Cour peut, avant ou après l'expiration du délai, le proroger ou en autoriser la prorogation.

42. (1) The Information Commissioner may

(*a*) apply to the Court, within the time limits prescribed by section 41, for a review of any refusal to disclose a record requested under this Act or a part thereof in respect of which an investigation has been carried out by the Information Commissioner, if the Commissioner has the consent of the person who requested access to the record;

(*b*) appear before the Court on behalf of any person who has applied for a review under section 41; or

(*c*) with leave of the Court, appear as a party to any review applied for under section 41 or 44.

(2) Where the Information Commissioner makes an application under paragraph (1)(*a*) for a review of a refusal to disclose a record requested under this Act or a part thereof, the person who requested access to the record may appear as a party to the review.

42. (1) Le Commissaire à l'information a qualité pour :

a) exercer lui-même, à l'issue de son enquête et dans les délais prévus à l'article 41, le recours en révision pour refus de communication totale ou partielle d'un document, avec le consentement de la personne qui avait demandé le document;

b) comparaître devant la Cour au nom de la personne qui a exercé un recours devant la Cour en vertu de l'article 41;

c) comparaître, avec l'autorisation de la Cour, comme partie à une instance engagée en vertu des articles 41 ou 44.

(2) Dans le cas prévu à l'alinéa (1)*a*), la personne qui a demandé communication du document en cause peut comparaître comme partie à l'instance.

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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