

## THIS ISN'T MEANT TO BE PERSUASIVE

The evidence presented here is too convoluted to support any rational theory about why my email and PeopleSoft were extended for so long by my former employer, the Government of the Northwest Territories (GNWT).

Instead, this is merely a collection of evidence and outcomes regarding the strange things they did regarding my former PeopleSoft account and my former work email.

### Watch for the following contradictions and inconsistencies:

- Did I have access to the information of 3 employees (page **39**) or did I have access to the information of 11 employees (page **72**)?
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- Were they unaware that the PeopleSoft issues continued until December (page **49**) or were they informed that the PeopleSoft issues continued into December (page **106**)?
- Did I continue to receive autogenerated PeopleSoft emails to my Gmail account for 8 months (page **71**) or 14 months (page **123**)?
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- Were the PeopleSoft issues related to me being "under a termination agreement" (page **50**) or were the PeopleSoft issues related to "trying to negotiate a termination agreement" (page **11**)?
- Was the litigation concluded with a Court Order on March 20, 2019 (page **143**) or was the litigation discontinued unresolved on November 4, 2020 (page **219**)?

### Please note as you review the following collection of records:

- My department head when I was employed at the GNWT was Gary MacDougall—we have the same last name, but we are not related.
- Both "Donald MacDougall" and "Donn MacDougall" refer to me.

MacDougall infobreach.ca: Irregularities in PeopleSoft and Email at the Government of the Northwest Territories – Evidence and Outcomes

Reported Time

https://ps.hr.gov.nt.ca/psp/hcmprod/EMPLOYEE/HRMS/c/CAPTU

ORACLE

Home | Add to Favorites | Sign out

Report Time

Report Time

Timesheet Summary

Employee Selection Criteria

Employee Selection Criteria

Clear Selection Criteria | Save Selection Criteria | Get Employees

View By: Week | Show Schedule Information

Date: 20/12/2014 | Previous Week | Next Week

Employees For Donald MacDougall, Totals From 15/12/2014 - 21/12/2014

Name	Reported Hours	Hours to be Approved	Exception	Reported Absence	Approved/Submitted Hours	Denied Hours	Annual, Sick and Special	Employee ID	Empl Record
	7.5000	0.0000			7.5000	0.0000	0.0000	6069	0
	67.5000	0.0000			67.5000	0.0000	0.0000	2929	0
	7.5000	0.0000			7.5000	0.0000	0.0000	744	0
	0.0000	0.0000			0.0000	0.0000	0.0000	367	0
	7.5000	0.0000			7.5000	0.0000	0.0000	112	0
	0.0000	0.0000			0.0000	0.0000	0.0000	35	0
	0.0000	0.0000			0.0000	0.0000	0.0000	226	0
	0.0000	0.0000			0.0000	0.0000	0.0000	170	0
	37.5000	0.0000			37.5000	0.0000	0.0000	317	0
	7.5000	0.0000			7.5000	0.0000	0.0000	170	0
	9.0000	0.0000			9.0000	0.0000	0.0000	179	0

Manager Self Service | Time Management | Approve Reported Time

Irregularities in PeopleSoft and Email at the Government of the Northwest Territories

Evidence and Outcomes



**Paperback available on Amazon:**  
[www.amazon.ca/dp/B0BLB9W1DN](http://www.amazon.ca/dp/B0BLB9W1DN)

**Infobreach.ca**

Irregularities in PeopleSoft and Email at the Government of the  
Northwest Territories

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**Contents**

THE INTRODUCTION.....1

THE "SYSTEMS" .....5

THE REQUEST .....9

PEOPLESOFT I ..... 15

THE DISCLOSURE ..... 21

PEOPLESOFT II..... 47

EMAIL I ..... 55

EMAIL II..... 59

EMAIL III..... 63

EMAIL IV ..... 69

    2018 NTIPC 12..... 71

THE NEGOTIATION ..... 83

    2018-027-NM023..... 85

    2018-027-NM075..... 87

    2018-027-NM077..... 88

    2018-027-NM078..... 90

THE SETTLEMENT ..... 91

    2018-27-NM121 ..... 93

REPUDIATION I ..... 97

    December 17, 2014 ..... 99

REPUDIATION II ..... 101

    December 18, 2014 ..... 103

    December 20, 2014 ..... 105

    December 24, 2014 ..... 106

REPUDIATION III..... 109

    January 26, 2015 ..... 111

REPUDIATION IV ..... 113

    February 25, 2015..... 115

    2018-027-NM031..... 116

    2018-027-NM003..... 118

REPUDIATION V ..... 121

    May 8, 2015..... 123

REPUDIATION VI.....125

    March 10, 2016.....127

REPUDIATION VII.....129

    November 14, 2016.....131

THE LITIGATION .....133

    March 20, 2019.....135

THE ADJOURNMENT .....137

THE CONCLUSION??? .....141

THE REFUSAL .....145

    2019 NTIPC 26 .....147

THE MISSING .....159

THE “PRIVILEGED” .....167

    2019 NTIPC 25 .....169

THE DEMAND .....195

THE DRAFT .....199

THE REPLY .....205

THE REPORT .....211

THE DISCONTINUANCE.....217

PRE-LITIGATION I .....221

PRE-LITIGATION II.....225

PRE-LITIGATION III.....229

THE EPILOGUE .....233

**THE INTRODUCTION**



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## **THE “SYSTEMS”**



**Paperback available on Amazon:**  
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---

**From:** Donn [<mailto:donn@theedge.ca>]  
**Sent:** September-17-14 5:48 PM  
**To:** Kristan Mcleod  
**Subject:** Re: Donald MacDougall

Their explanation is laughable, but heck, I like a good laugh! Yes, I'm happy to sign off on this!

Donn

Sent from my iPhone

On Sep 17, 2014, at 5:10 PM, Kristan Mcleod <[kmcleod@chiverslaw.com](mailto:kmcleod@chiverslaw.com)> wrote:

Hi Donn:

Please see below – the only thing worse than waiting for systems guys to fix stuff is when you don't have systems guys. What do you think? Are you willing to proceed despite the Peoplesoft snag?

Kristan

---

**From:** Brad Patzer [[mailto:Brad\\_Patzer@gov.nt.ca](mailto:Brad_Patzer@gov.nt.ca)]  
**Sent:** September-17-14 1:43 PM  
**To:** Kristan Mcleod  
**Subject:** RE: Donald MacDougall

Hi Kristan

My apologies for the delayed response. I was trying to get an answer to the Peoplesoft issues; I don't have one yet. It appears to be a "systems" problem. I'm hoping that our "systems" people can resolve that soon. I will keep you posted.

As for your other question, I can advise that the "do not hire" notification will be removed upon execution of the agreement.

I am hoping we can execute the agreement notwithstanding the Peoplesoft issues. If so, could you have Mr. MacDougall sign the agreement in duplicate (or more), after which I will have it signed on my end.

If there is anything else we need to discuss please let me know. Thanks.

Brad

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## **THE REQUEST**



**Paperback available on Amazon:**  
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**From:** [Sylvia Haener](#)  
**To:** [Nicole McNeil](#); [Brad Patzer](#); [Mark Aitken](#)  
**Subject:** access request - Donn Macdougall  
**Date:** Tuesday, October 07, 2014 2:07:05 PM  
**Attachments:** [Scanned from a Xerox multifunction device.pdf](#)

---

Please see the attached which Denise Anderson just provided me. Much of this request relates to situations that arose due to his being considered terminated and us then trying to negotiate a termination agreement. He signed the agreement last week, but it is still under review by us and has not been signed by the GNWT. Denise wanted to transfer this request in its entirety to finance as she thought it related to Psoft. I advised her that I needed to provide it to legal counsel and we need to seek advice in relation to it. **Brad - Help!!!!!!**

Sylvia Haener,  
Deputy Minister, Department of Justice,  
Government of the Northwest Territories.  
phone: 867-920-6197  
fax: 867-873-0307  
e-mail: [sylvia\\_haener@gov.nt.ca](mailto:sylvia_haener@gov.nt.ca)

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-----Original Message-----

**From:** [gnwt\\_scanner@gov.nt.ca](mailto:gnwt_scanner@gov.nt.ca) [[mailto:gnwt\\_scanner@gov.nt.ca](mailto:gnwt_scanner@gov.nt.ca)]  
**Sent:** Tuesday, October 07, 2014 2:00 PM  
**To:** Sylvia Haener  
**Subject:** Scanned from a Xerox multifunction device

Please open the attached document. It was scanned and sent to you using a Xerox multifunction device.

Attachment File Type: pdf

multifunction device Location: machine location not set  
Device Name: CHY0605\_X9201

For more information on Xerox products and solutions, please visit <http://www.xerox.com>



Roxanne Campbell  
 Manager, Finance & Corporate Support  
 Department of Human Resources  
 5th Floor, YK Centre  
 4922-48th Street  
 P.O. BOX 1320  
 YELLOWKNIFE NT X1A 2L9

Denise Anderson  
 Manager, GNWT Access and Privacy Office  
 Policy and Planning Division  
 Department of Justice  
 6th Floor Courthouse, 4903-49th Street  
 P.O. BOX 1320  
 YELLOWKNIFE NT X1A 2L9

RECEIVED  
 Policy & Planning Division  
 Department of Justice  
 OCT 06 2014

OCT - 1 2014

September 22, 2014

#### By Mail

Please find attached a copy of a Request for *Access to Information under the Access to Information and Protection of Privacy Act*.

Thank you,



Donald MacDougall



## ACCESS TO INFORMATION AND PROTECTION OF PRIVACY

### Request for Access to Information

This is a request for: (Please check one)

☐ General information

☒ My own personal information

☐ Personal information for another person  
 (Attach proof of authority to act for the person)

Which Public Body are you asking for information? (Please fill in name of Department, Agency, Board or Commission)

The Department of Human Resources and the Department of Justice

#### Applicant

☒ Mr.

☐ Ms.

Last name

First Name

☐ Mrs.

☐ Miss

MacDougall

Donald

Company name (if applicable)

City or town

Yellowknife

Province

NT

Postal Code

X1A3S8

Telephone (home)

867-446-9366

Telephone (work)

867-446-9366

Fax

What information are you requesting?

☒ I would like to receive a copy of the original record

☐ I would like to examine the original record

Please describe the information or records to which you want access in as much detail as you can. If you want access to personal information, be sure to provide all of the person's previous names. If you need more space, please use the back of this form.

Please find details of my request attached.

My full contact details are as follows:

Donald MacDougall

107 Rivett Crescent

Yellowknife, NT

X1A 3S6

Phone: 867-446-9366

Email: donn\_macdougall@gmail.com

Applicant's signature

Date

Sep 22, 2014

Personal information contained on this form is collected under the Access to Information and Protection of Privacy Act, and will be used to respond to your request. A \$25.00 initial fee must accompany requests for general records.

For Public Body use only

Date received

Request number

Comments



## REGARDING MY PERSONAL INFORMATION IN PEOPLESOFT

Donald MacDougall, PeopleSoft ID 119813

Over the past several months my personal information in PeopleSoft has been compromised without my knowledge or consent. I would all documents, including but not limited to, emails, written notes, internal memoranda, electronic records held by the GNWT, as well as any electronic record specifically within PeopleSoft ("Documents") authorizing, requesting, or discussing in anyway, the following inaccuracies introduced into my personal information held in PeopleSoft between the dates of March 1, 2014 to September 1, 2014:

1. Sometime following March 10, 2014 and on or about the date of March 19, 2014 my password was changed, and someone accessed my PeopleSoft account to do the following:
  - a. Change many instances of my approved vacation time to a total of 18.5 hours of unpaid leave—this entry appeared on my paycheque dated March 28, 2014 as "Vacation Leave Taken 8E -18.5";
  - b. Enter an additional 7.5 hours of regular time—this entry appeared on my paycheque dated March 28, 2014 as "Regular 8E 82.5" (my normal working hours being 75 hours); and
  - c. Approve these changes of my time—a net reclamation of 11.0 hours;

I would like all Documents regarding this change of my reported time.

2. Following this reclamation noted at paragraph 1 above, a correction was purportedly attempted—and I was paid for 11.0 hours "Vacation Leave Taken 8E" on the date of April 14, 2014. I would like all Documents regarding this repayment.
3. On March 17, 2014 someone accessed my PeopleSoft account to create delegation requests to Gary MacDougall—two delegation requests were made "Manage Approve Reported Time" and "Manage Approve Reported Time". These delegations continue. I would like all Documents regarding these delegations.
4. On May 30, 2014 I applied for the position of Deputy Registrar, Land Titles -- Operations, Job ID 11675. Following the closing date (May 30, 2014) my status changed from applied to screening and no further status update was received on PeopleSoft until sometime after I learned that the position had been filled—I would like all Documents touching upon why these status updates were specifically excluded from my access through PeopleSoft.
5. There is other Personal Information regarding myself that is contained within PeopleSoft, that I feel may also have been modified/compromised without my knowledge or consent between the dates of March 1, 2014 to September 1, 2014:
  - a. Any Documents regarding my status, or a change in status, as an employee in PeopleSoft.
  - b. Without limiting the information requested at paragraph 5.a, any Documents regarding a change in my employment status in PeopleSoft to "dismissed" or "rejected on probation", or "deemed to have abandoned their position in the Territorial Public Service" (these statuses appearing under section 0109 - Screening Applications of the GNWT Human Resource Manual).

# PEOPLESOFT I



Paperback available on Amazon:  
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December 1, 2014

Mr. Donald MacDougall  
107 Rivett Crescent  
YELLOWKNIFE NT X1A 3S6

Dear Mr. MacDougall:

**Request for Access to Personal Information**

Your request for access to your personal information pertaining to PeopleSoft information was received by the Department of Justice on October 6, 2014. This request for access is being processed under the *Access to Information and Protection of Privacy Act* (the Act).

Your initial request indicated you were seeking this information from both the Department of Justice and the Department of Human Resources; however PeopleSoft personnel functions also fall under the Department of Finance. In order to facilitate a coordinated response to your multi-department request, we required a short extension in order to consult with the other two departments on this matter.

Your access to information request is as follows;

**REGARDING MY PERSONAL INFORMATION IN PEOPLESOFT**

Donald MacDougall, PeopleSoft ID 119813

Over the past several months my personal information on PeopleSoft has been compromised without my knowledge or consent. I would like all documents, including but not limit to, emails, written notes, internal memoranda, electronic records held by the GNWT, as well as any electronic record specifically within PeopleSoft ("Documents") authorizing, requesting, or discussing in anyway, the following inaccuracies introduced into my personal information held in PeopleSoft between the dates of March 1, 2014 to September 1, 2014:

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*I would like all Documents regarding this change of my reported time.*

2. *Following this reclamation noted as paragraph 1 above, a correction was purportedly attempted-and I was paid for 11.0 hours "Vacation Leave Taken 8E" on the date of April 14, 2014. I would like all Documents regarding this repayment.*
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5. *There is other Personal Information regarding myself that is contained within PeopleSoft, that I feel may also have been modified/compromised without my knowledge or consent between the dates of March 1, 2014 to September 1, 2014:*
  - a. *Any Documents regarding my status, or a change in status, as an employee in PeopleSoft.*
  - b. *Without limiting the information requested at paragraph 5.a, any documents regarding a change in my employment status in PeopleSoft to "dismissed" or "rejected on probation", or "deemed to have abandoned their position in the Territorial Public Service" (these statuses appearing under section 0109-Screening of the GNWT Human Resource Manuel).*

It is important to clarify that access to your personal information contained within the PeopleSoft human resource system has been by designated individuals only. Any access that has taken place has been undertaken by employees authorized to access employee personal information within the PeopleSoft system for the specific purpose of administration of leave and/or attendance or for the management of personnel. A review of your PeopleSoft data shows that access has been authorized in all instances.

In our initial consultation with the Departments of Human Resources and Finance, it was determined that it would be helpful to provide you with a coordinated response on the information you requested. **However it is important to note, decisions relating to the application of exceptions were made by the Deputy Head of the Department that provided the document.** We have attached a document table listing pertaining to your request which identifies the document, the department it originated from and the application of any exceptions.

On review of your request, it has been determined partial access will be provided to the information subject to the request. Portions of the information requested are excepted from disclosure under the following paragraphs of the Act.

**Subsection 14(1)** provides that a public body may refuse to disclose information if the disclosure could reasonably be expected to reveal:

- *Advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council (paragraph 14(1)(a)),*
- *Consultations or deliberations involving:*
  - *Officers or employees of a public body;*
  - *A member of the Executive Council; or*
  - *The staff of a member of the Executive Council (paragraph 14(1)(b)),*

Portions of your request pertain to advice, discussions and deliberations on human resource matters. Each document was assessed to determine if advice was being provided or if it related to deliberations between departmental officials and/or human resources officials.

Additionally portions of the documents were denied in relation to solicitor-client privilege. **Paragraph 15(1)(a)** of the Act provides that a public body may refuse to disclose information:

*That is subject to any type of legal privilege, including solicitor-client privilege (paragraph 15(1)(a)).*

The intent of this section is to assure that legal information under the custody or control of a public body is protected in much the same way as an individual's information would be by his or her lawyer. A number of documents were identified as confidential communications between legal counsel and a client department, and as such, it has determined that the confidential nature of these communications must be respected. This is a discretionary section, in that the privilege may be waived, but following a review of this matter it has been determined that solicitor-client privilege will not be waived.

Portions of the documents relating to the Department of Finance were excepted from disclosure under **Paragraph 23(1)** which establishes a mandatory exception (i.e., the public body has no discretion to release) for personal information if disclosure would be an unreasonable invasion of a third party's personal privacy. This section provides that disclosure of personal information is presumed to be an unreasonable invasion of a third party's privacy if:

*The personal information relates to employment, occupational or educational history; (paragraph 23(2)(d)),*

Under section 28 of the Act, you may ask the Information and Privacy Commissioner to review the decision not to disclose information that you requested. You have 30 days from the receipt of this notice to request a review by writing the Information and Privacy Commissioner at:


Ms. Elaine Keenan-Bengts  
Information and Privacy Commissioner  
5018-47th Street  
PO Box 262  
Yellowknife NT X1A 2N2

If you wish to request a review of the decision to deny access to portions of the information requested, please provide the Information and Privacy Commissioner with the following information:



1. A copy of this letter and all attachments;
2. A copy of your original request which was sent to the Departments of Justice and Human Resources; and
3. The reason why you are requesting a review.

If you have any questions about this matter, please contact me at (867) 873-7015.

Sincerely,  
  
Denise Anderson,  
Manager,  
GNWT Access and Privacy Office

Attachments

Cc  
Michelle Beard, ATIPP Coordinator, Department of Human Resources  
Cheryl Dies, ATIPP Coordinator, Department of Finance

## THE DISCLOSURE

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**From:** [REDACTED]  
**Sent:** Tuesday, March 25, 2014 3:21 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Donn MacDougall: Leave adjustment requests

Yes

**From:** [REDACTED]  
**Sent:** Tuesday, March 25, 2014 2:57 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Donn MacDougall: Leave adjustment requests

So to confirm are we good with 15.85? I need to advise the DM of Justice .

**From:** [REDACTED]  
**Sent:** Tuesday, March 25, 2014 1:18 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Donn MacDougall: Leave adjustment requests

Sorry, My typo. As per Time Sheet

Donald MacDougall Employee ID:  
Job Title: Lawyers And Quebec Notaries Empl Record:

**Instructions**

\*View By: Day  
\*Date: 03/12/2013

Reported Hours: 7.5000  
Scheduled Hours: 7.5000

**Tuesday 03/12/2013**

Tue 3/12	Total Hours	Time Reporting Code
0.4000	0.4000	A01F - Vacation Leave Taken 8E
4.1000	4.1000	L01 - PLWOP (<or=3 mnths) 8D/E/U T8
3.0000	3.0000	REGH - Regular 8E

**From:** [REDACTED]  
**Sent:** Tuesday, March 25, 2014 11:38 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Donn MacDougall: Leave adjustment requests



In your email outlining what amounts were changed, there is .10 hrs of A01, this would reduce the 15.85 to 15.75 hrs would it not?

These were the days/hours that were changed from Vacation Leave another type of leave/leave no pay

Mar 6, 14 A01 was changed to LT2 2.25 hrs and L01 1 hr

Feb 27, 14 was changed to L01 3.25 hrs

Dec 3, 13 was changed to L01 4.10 and A01 .10 hrs

Dec 2, 13 was change to L01 7.5 hrs

In total 2.35 hrs. paid and 15.75 hrs. Leave no pay due to insufficient leave credits.

Salary: 15.75 hrs. x \$12.22/hr = \$192.97

Northern

Allow: 15.75 hrs. x \$17.231/hr = \$271.87

Manager, Payroll  
Employee Services  
Department of Human Resources  
Government of the Northwest Territories

1-867-873-7032 | 1-867-873-0282 | [www.hr.gov.nt.ca](http://www.hr.gov.nt.ca)  
Human Resource Help Desk Toll Free: 1-866-475-8162 or [hrhelpdesk@gov.nt.ca](mailto:hrhelpdesk@gov.nt.ca)



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From: [REDACTED]  
Sent: Tuesday, March 25, 2014 11:14 AM  
To: [REDACTED]  
Subject: RE: Donn MacDougall: Leave adjustment requests

Good day

The recovery of annual hours is 15.85 hrs.

I have attached a copy of the time report that shows the time is changed to L01 PLWOP. This is the annual that was changed equaling 15.85 hrs.

From: [REDACTED]  
Sent: Tuesday, March 25, 2014 10:18 AM

To: [REDACTED]  
Subject: RE: Donn MacDougall: Leave adjustment requests

So is the recovery amount 15.75?

From: [REDACTED]  
Sent: Tuesday, March 25, 2014 10:03 AM  
To: [REDACTED]  
Subject: RE: Donn MacDougall: Leave adjustment requests

I think the confusion surrounding the amount of hours is due to some vacation hours being switched to lieu hours.

The original amount of over usage was 18.10 hrs.

2.25 hrs. of this was changed to Lieu time Taken as the employee had hours in his lieu bank  
Vacation hours earned on the lieu hours taken adjusted the balance of vacation earned, and 0.10 hrs. of vacation was earned/applied.  
This is a total of 2.35 hrs. paid. This reduced the vacation hour over-usage from 18.10 hrs to 15.75 hrs.

The clearance form should be changed to reflect 0 hrs vacation as the time sheet has been updated.

[REDACTED] please advise if what I've got about is correct.

Manager, Payroll  
Employee Services  
Department of Human Resources  
Government of the Northwest Territories

1-867-873-7032 | 1-867-873-0282 | [www.hr.gov.nt.ca](http://www.hr.gov.nt.ca)  
Human Resource Help Desk Toll Free: 1-866-475-8162 or [hrhelpdesk@gov.nt.ca](mailto:hrhelpdesk@gov.nt.ca)



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From: [REDACTED]  
Sent: Tuesday, March 25, 2014 9:55 AM  
To: [REDACTED]  
Subject: RE: Donn MacDougall: Leave adjustment requests

Good day

I have attached both copies of the (before & after)



Hope this helps

**From:** [REDACTED]  
**Sent:** Tuesday, March 25, 2014 9:48 AM  
**To:** [REDACTED]  
**Subject:** RE: Donn MacDougall: Leave adjustment requests

[REDACTED] did the leave review. It's a bit difficult to understand, however we can forward you a copy of it.

The one thing to remember is we earned leave based on hours paid. So in a pay-period, we are paid 75 hours and earn based on those 75 hours. When an employee over uses their entitlement, we change the overused leave to leave without pay, so now rather than earning on 75 hours, you earn on the 75 hours less the hours you changed from annual to leave without pay. So on the original 15+ hours overused, once we start changing the 15+hours in the system, the hours owed, change as well.

[REDACTED] will show you a copy of before and after.

[REDACTED] can you please forward a copy of the before review, and then after review once the changes were made in the system.

[REDACTED]

**From:** [REDACTED]  
**Sent:** Tuesday, March 25, 2014 9:13 AM  
**To:** [REDACTED]  
**Subject:** RE: Donn MacDougall: Leave adjustment requests

Thanks [REDACTED]

The 18hrs differs from the 15 hours as was identified previously. Any chance you have something I can provide the Department?

**From:** [REDACTED]  
**Sent:** Tuesday, March 25, 2014 8:58 AM  
**To:** [REDACTED]  
**Subject:** RE: Donn MacDougall: Leave adjustment requests

The clearance was completed by Annetta and forwarded to Payroll on March 14, 2014. The recovery as it stands now was 18.10 hrs of annual leave. I am assuming Chris pulled the pay or the clearance prior to it processing.

[REDACTED]

**From:** [REDACTED]  
**Sent:** Tuesday, March 25, 2014 8:40 AM  
**To:** [REDACTED]  
**Subject:** RE: Donn MacDougall: Leave adjustment requests

Perfect thank you.

4

**From:** [REDACTED]  
**Sent:** Tuesday, March 25, 2014 8:39 AM  
**To:** [REDACTED]  
**Subject:** RE: Donn MacDougall: Leave adjustment requests

Let me have a look, and I'll get back to you right away.

[REDACTED]

**From:** [REDACTED]  
**Sent:** Tuesday, March 25, 2014 8:32 AM  
**To:** [REDACTED]  
**Subject:** FW: Donn MacDougall: Leave adjustment requests

[REDACTED]

This is the leave report [REDACTED] pulled.

**From:** [REDACTED]  
**Sent:** Thursday, March 20, 2014 12:04 PM  
**To:** [REDACTED]  
**Subject:** RE: Donn MacDougall: Leave adjustment requests

[REDACTED] the time report attached shows the adjustments due to his termination date.

**From:** [REDACTED]  
**Sent:** Thursday, March 20, 2014 11:57 AM  
**To:** [REDACTED]  
**Subject:** RE: Donn MacDougall: Leave adjustment requests

Perfect. Thanks [REDACTED]

**From:** [REDACTED]  
**Sent:** Thursday, March 20, 2014 11:35 AM  
**To:** [REDACTED]  
**Subject:** RE: Donn MacDougall: Leave adjustment requests

[REDACTED] I've checked PS and there have been adjustments made by data management with comments "EE over used Annual Leave". I've requested a report of all the adjustments as I'm not sure how far they actually go back.

[REDACTED]

**From:** [REDACTED]  
**Sent:** Thursday, March 20, 2014 10:51 AM  
**To:** [REDACTED]  
**Subject:** RE: Donn MacDougall: Leave adjustment requests

I should mention this is rather urgent.

**From:** [REDACTED]  
**Sent:** Thursday, March 20, 2014 10:50 AM  
**To:** [REDACTED]  
**Subject:** FW: Donn MacDougall: Leave adjustment requests

[REDACTED] can you look into this for me – was a manual adjustment made?

5



**From:** [REDACTED]  
**Sent:** Thursday, March 20, 2014 10:32 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Donn MacDougall: Leave adjustment requests

Hi [REDACTED] – this is an exchange that [REDACTED] has had with Donn MacDougall, in relation to leave adjustments that have been made within HR – in all likelihood to rationalize Donn's leave taken against his entitlements, given that Donn is not actually "earning" annual leave right to March 31.

[REDACTED] had thought that the entries had originated from Donn personally, but clearly not.

[REDACTED] – would it be possible for HR to generate an explanation for any adjustments that have been made (or that are proposed to be made) to rationalize Donn's leave against his entitlement? [REDACTED] would then provide that explanation to Donn. **Section 14(1)(b)(i)**

**Section 14(1)(b)(i)**

**Section 14(1)** Donn did not know he would no longer be working with us to March 31 when he took the leave.

BTW, Donn alludes to his lawyer in his email below, but we do not know who has been retained (if in fact he has retained counsel). Thx

**From:** [REDACTED]  
**Sent:** Thursday, March 20, 2014 8:44 AM  
**To:** [REDACTED]  
**Subject:** FW: Leave adjustment requests

FYI

**From:** [REDACTED]  
**Sent:** Wednesday, March 19, 2014 11:32 PM  
**To:** [REDACTED]  
**Subject:** Fwd: Leave adjustment requests

Well that didn't work. Donn's reply to my email. I looked further into the Peoplesoft entries (into the time and labour launch screen) and it appears that these are adjustments made by HR. **Section 14 (1)(b)(i)**

**Section 14(1)(b)(i)**

Sent from my iPad

Begin forwarded message:

**From:** Donn <[donn@theedge.ca](mailto:donn@theedge.ca)>  
**Date:** March 19, 2014 at 9:57:16 PM PDT  
**To:** 'Gary MacDougall' <[Gary\\_MacDougall@gov.nt.ca](mailto:Gary_MacDougall@gov.nt.ca)>  
**Subject:** RE: Leave adjustment requests

6

Gary,

You are missing something.

I have never submitted a request for LWOP in any of my years with the GNWT, and I do not have access to PeopleSoft.

Normally, I would suspect that this is simply the result of a HR making a manual adjustment to my annual leave that was advanced before it was earned, but from your email it seems that this may be a little more than that.

Please provide me with complete details of these requests for LWOP--they were not submitted by me, and I think I'd like to get my lawyer involved before we submit our settlement proposal to Sylvia. Sylvia had suggested that I submit such a proposal by March 24, so I would appreciate the details ASAP.

Donn

-----Original Message-----

**From:** Gary MacDougall [[mailto:Gary\\_MacDougall@gov.nt.ca](mailto:Gary_MacDougall@gov.nt.ca)]  
**Sent:** March-19-14 10:45 PM  
**To:** Donn  
**Subject:** Leave adjustment requests

Hello Donn,

I saw your initial request on Peoplesoft to change the approved annual leave for March 6 to lieu time/LWOP and then see that there are other requests going back to December. I think I can approve them, even the request for December, but I don't see the point of it - whether your pay is reduced by LWOP or adjusted for annual leave, the result should be the same. Or am I missing something?

Gary

Sent from my iPad

7



**From:** [REDACTED]  
**Sent:** Thursday, March 27, 2014 9:18 AM  
**To:** [REDACTED]  
**Subject:** FW: Donn MacDougall  
**Attachments:** Letter to KM March 25 2014.pdf

**You will need to put the leave back.** You will put the LO1 back to Annual as we think the department will pay it off for the employee.

**From:** [REDACTED]  
**Sent:** Tuesday, March 25, 2014 3:53 PM  
**To:** [REDACTED]  
**Subject:** FW: Donn MacDougall

FYI

The termination Agreement will follow shortly for your review upon their acceptance of our counterproposal. Thank you and please let me know if you have any questions or concerns.

**From:** [REDACTED]  
**Sent:** Tuesday, March 25, 2014 3:42 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** FW: Donn MacDougall

[REDACTED] will you take care of the copy to [REDACTED]???

Deputy Minister, Department of Justice,  
Government of the Northwest Territories.  
phone: 867-920-6197  
fax: 867-873-0307  
e-mail: [REDACTED]

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**From:** [REDACTED]  
**Sent:** Tuesday, March 25, 2014 3:41 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Donn MacDougall

Good afternoon, attached is a response to your letter of March 21<sup>st</sup>.

1

Deputy Minister, Department of Justice,  
Government of the Northwest Territories.  
phone: 867-920-6197  
fax: 867-873-0307

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**From:** [REDACTED]  
**Sent:** Friday, March 21, 2014 11:36 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Donn MacDougall

Good morning,

On behalf of [REDACTED] please find attached correspondence for your attention.

Thank you.

Legal Assistant  
Chivers Carpenter  
Suite 101, 10426 – 81 Avenue  
Edmonton, AB T6E 1X5

Phone: 780-439-3611  
Fax: 780-439-8543

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2



**Gary MacDougall**

---

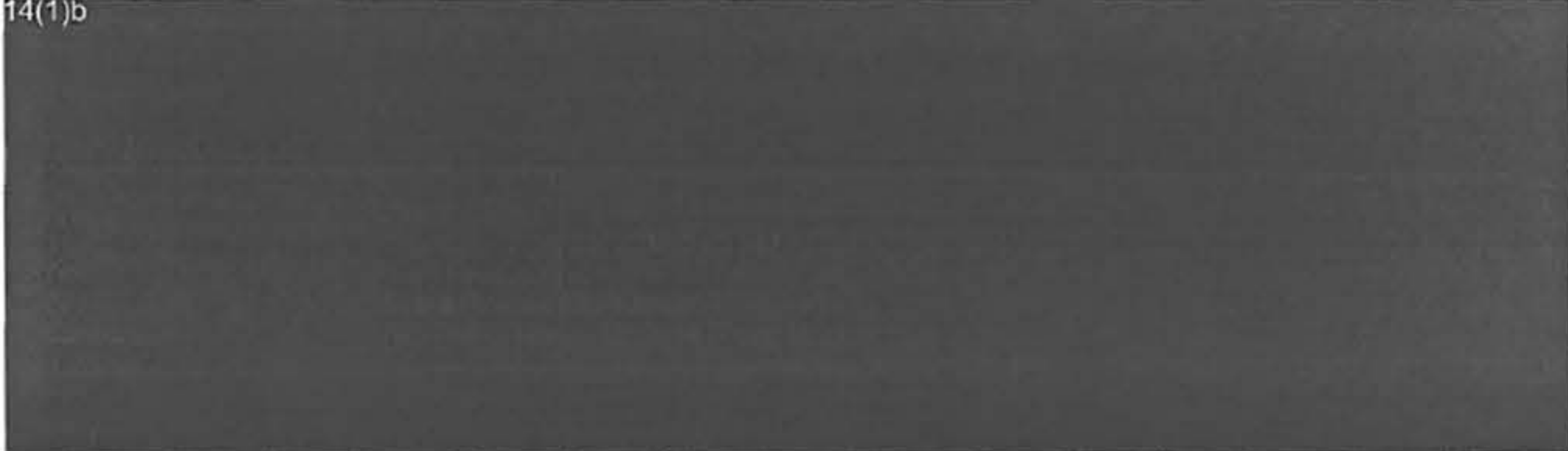
**From:** Kim Wickens  
**Sent:** Thursday, April 03, 2014 3:23 PM  
**To:** Gary MacDougall  
**Cc:** Sylvia Haener; Mark Aitken  
**Subject:** RE: PDR - March 28, 2014 (Donn MacDougall)

Gary,  
I am looking into this and will be in touch shortly.  
Kim

**From:** Gary MacDougall  
**Sent:** Wednesday, April 02, 2014 5:59 PM  
**To:** Kim Wickens  
**Cc:** Sylvia Haener; Mark Aitken  
**Subject:** FW: PDR - March 28, 2014 (Donn MacDougall)

Hi Kim,

14(1)b



Gary

**From:** Janice Silverio  
**Sent:** Wednesday, April 02, 2014 10:37 AM  
**To:** Gary MacDougall  
**Subject:** RE: PDR - March 28, 2014

Hi Gary,

The paycheque summary shows a vacation leave taken recoveries/adjustments. See attached for reference.

Thanks.  
Janice

**From:** Gary MacDougall  
**Sent:** Tuesday, April 01, 2014 4:56 PM  
**To:** Janice Silverio  
**Subject:** PDR - March 28, 2014

Hi Janice,

Can you please provide me with the particulars of Donald MacDougall's pay as shown on the PDR – he did not receive all of his usual pay last Friday?

Thanks.

Gary

**Gary MacDougall**  
Director, Legal Registries  
Department of Justice  
Government of the Northwest Territories  
Yellowknife, NT  
Phone: (867) 873-7490  
Fax: (867) 873-0243

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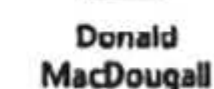
**Emergency Information**

[illegible]

34

**From:** Kim Wickens  
**Sent:** Monday, April 07, 2014 4:47 PM  
**To:** Gary MacDougall  
**Cc:** Mark Aitken  
**Subject:** RE: Donald MacDougall

Yes it was. I included the confirmation from payroll for your reference.  
Sorry about the confusion.  
Kim



Thanks, Kim

**Gary**

Hi Gary,

I have confirmed that Payroll Issued an off cycle cheque which was paid and deposited into his account on April 4, 2014.

Kim



**Gary MacDougall**

**From:** Chris Holland  
**Sent:** Monday, April 07, 2014 4:00 PM  
**To:** Kim Wickens  
**Subject:** Donald MacDougall  
  
**Sensitivity:** Confidential  
  
**Expires:** Saturday, October 04, 2014 12:00 AM

Hi,  
Just sending a confirmation that the 11 hrs for Donald MacDougall was paid out and deposited to his account on April 4<sup>th</sup>.

**Christine Hoiland**  
Manager, Payroll  
Employee Services  
Department of Finance  
Government of the Northwest Territories

☎ 1-867-873-7032 | 📠 1-867-873-0282 |  
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**Gary MacDougall**

**From:** Kim Wickens  
**Sent:** Wednesday, April 23, 2014 4:16 PM  
**To:** Gary MacDougall  
**Subject:** RE: User ID Password

Hi Gary,

I will look into this. It may be that he required a new password. The LWOP being approved by payroll is likely the off cycle cheque but I will touch base with payroll.

Kim

**From:** Gary MacDougall  
**Sent:** Wednesday, April 16, 2014 9:42 AM  
**To:** Kim Wickens  
**Subject:** RE: User ID Password

And in a related development, also in Donn's autoforwarded emails, I received 4 system-generated emails from Peoplesoft late last evening confirming that the LWOP time that had been resubmitted by HR folks as Annual Leave has now been approved (not by me!). I'm not sure if this will now trigger an overpayment.

Gary

**From:** Gary MacDougall  
**Sent:** Tuesday, April 15, 2014 5:07 PM  
**To:** Kim Wickens  
**Subject:** FW: User ID Password

Kim,

I meant to ask you about this earlier. Donn's emails are being autoforwarded to me and I received this curious one.

Perhaps he was being given limited network access to a Peoplesoft account so that he can see his own pay invoices, etc. over the coming year. But if so, I wasn't aware of it. Do you know what this is about?

Gary

**From:** PS\_HR\_ADMIN@gov.nt.ca [mailto:PS\_HR\_ADMIN@gov.nt.ca]  
**Sent:** Sunday, April 13, 2014 10:30 PM  
**To:** Donald MacDougall  
**Subject:** User ID Password

Hi,  
This is your new password to the HR System as you requested.

59A63R77

Please click one of the links below to log into HRIS and change your temporary password.

Internal - <http://ps.hr.gov.nt.ca/>



External - <https://ps.hr.gov.nt.ca/>

If you are having issues signing in with this new password please contact the HR Helpdesk at [hrhelpdesk@gov.nt.ca](mailto:hrhelpdesk@gov.nt.ca)

This is a system-generated email. Do not reply to this email.

sitehelpdesk

Page 1 of 2

2015/18-06

#### Call Details

No. :	164006	Date :	3/14/2014 10:23:09 AM
User :	Baggs,Lori	Phone :	920-8027
Site :	Yellowknife HRSC	Department :	Human Resources
Call Type :	HR Systems	Sub Type :	Approval Access
Operator :	cbadcock	Category :	HRIS Priority 1
Status :	Closed		
Employee ID :	869 / 0, 122744 / 0, 170 / 0		
Due Date :			

Summary : FW: Donn MacDougall - Peoplesoft Approval group 82AZ1  
Problem : Please reassign this approval group as requested until December 12, 2014 or further notice. Donn MacDougall's managers access should also be ceased.

Thanks

Lori

From: Gary MacDougall

Sent: Friday, March 14, 2014 9:04 AM

To: Lori Baggs

Subject: Donn MacDougall - Peoplesoft Approval group 82AZ1

Hi Lori,

I am not sure if you are aware but Donn MacDougall will no longer be employed in Legal Registries. Can you please initiate the steps necessary to assign his approval group 82AZ1 to me as soon as possible?

Thanks.

Gary

Gary MacDougall

Director, Legal Registries



Department of Justice  
Government of the Northwest Territories  
Yellowknife, NT  
Phone: (867) 873-7490  
Fax: (867) 873-0243

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Resolution : Hi Lori,

I have removed Manager Self Service from Donald MacDougall, and I have delegated his approvals to Gary until Dec 12.

Gary has already accepted the delegation so time is going to him now. If he has any issues approving this time please let me know and I will have to changed things on our end.

Thanks  
Carolyn

Carolyn Badcock  
Functional Lead  
Human Resource Information Systems  
Department of Human Resources  
Government of the Northwest Territories fu 1-867-920-6559

#### Call Events

Date Added	Added By	Time	Cost	Event Comment
3/17/2014 3:47:04 PM	cbadcock	00:00	0.00	Status changed from Open to Closed
3/17/2014 3:16:05 PM	cbadcock	00:00	0.00	Changed Row Sec to SSALL Removed Z_GNT_Manager Removed Z_GNT_Hiring_Manager Delegated from Donald MacDougall to Gary MacDougall
3/17/2014 3:12:08 PM	cbadcock	00:00	0.00	Operator changed from cmeadus to cbadcock
3/17/2014 3:05:08 PM	cmeadus	00:00	0.00	Operator changed from cmckay to cmeadus
3/17/2014 3:00:12 PM	cmeadus	00:00	0.00	Operator changed from T - HR Systems Sup to cmckay
3/17/2014 10:43:36 AM	amcpherson	00:00	0.00	Operator changed from (assign to) to T - HR Systems Sup
3/17/2014 10:43:36 AM	amcpherson	00:00	0.00	Call Type changed from (select type) to HR Systems
3/17/2014 10:43:36 AM	amcpherson	00:00	0.00	Sub Type changed from (select type) to Approval Access
3/17/2014 10:43:36 AM	amcpherson	00:00	0.00	Category changed from (select category) to HRIS Priority 1
3/14/2014 10:23:10 AM	EMLmonitor	00:00	0.00	Call Logged by Email

#### Gary MacDougall

**From:** Lori Baggs  
**Sent:** Friday, July 04, 2014 11:21 AM  
**To:** HRHelpDesk  
**Co:** Gary MacDougall  
**Subject:** FW: Delegated E-performance documents - Donn MacDougall

Please see below request. Performance Management for employees under position 00002243 to be transferred to 00002353 Director Legal Registries 8772 Gary MacDougall

Thank you,  
Lori

Lori Baggs  
Client Services Manager  
Department of Human Resources  
873-7186

**From:** Gary MacDougall  
**Sent:** Thursday, July 03, 2014 4:30 PM  
**To:** Lori Baggs  
**Subject:** Delegated E-performance documents - Donn MacDougall

Hi Lori,

Donn MacDougall's leave approval authority for group 82AZ1 has been delegated to me but the e-performance documents have not. Can you please arrange for this?

Thanks.

Gary

Gary MacDougall  
Director, Legal Registries  
Department of Justice  
Government of the Northwest Territories  
Yellowknife, NT  
Phone: (867) 873-7490  
Fax: (867) 873-0243



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**Gary MacDougall**

From: Beth Collinson  
Sent: Wednesday, September 17, 2014 4:47 PM  
To: Gary MacDougall  
Cc: Christy Campbell  
Subject: RE: Upcoming End of Current Employment - Yellowknife - M

Hi - yes, turns out that is what they did

:)  
beth

-----Original Message-----

From: Gary MacDougall  
Sent: Wednesday, September 17, 2014 4:46 PM  
To: Beth Collinson  
Cc: Christy Campbell  
Subject: RE: Upcoming End of Current Employment - Yellowknife - M

Thanks, Beth

Even if it was changed back to his former work email, that would work as this mail account still exists and is redirected to me.

Gary

-----Original Message-----

From: Beth Collinson  
Sent: Wednesday, September 17, 2014 4:28 PM  
To: Gary MacDougall  
Cc: Christy Campbell  
Subject: RE: Upcoming End of Current Employment - Yellowknife - M

Hi Gary

I've talked to one of our systems staff and they have something in mind to stop these types of notifications from going to his home email.

Thanks  
beth

-----Original Message-----

From: Gary MacDougall  
Sent: Wednesday, September 17, 2014 9:30 AM  
To: Beth Collinson  
Subject: FW: Upcoming End of Current Employment - Yellowknife - M

Hi Beth,

Although "so many other messages" is greatly exaggerated, can steps be taken to ensure that Donn does not receive anything at home from Peoplesoft in his former supervisory capacity. I'm not sure how his home email would have ever been the email to which information as a supervisor would be sent. Had it been his former work email, it would have been redirected to me.

Thanks.

Gary

-----Original Message-----

From: Donn [mailto:donn@theedge.ca]  
Sent: Tuesday, September 16, 2014 11:39 PM  
To: Gary MacDougall  
Subject: FW: Upcoming End of Current Employment - Yellowknife - M

Gary,

I've received this message, like so many other messages, at my home, outside of working hours--this is getting tiresome. Fix this.

Donn

Information not pertaining to ATIPP Request

-----Original Message-----

From: Do-Not-Reply@gov.nt.ca [mailto:Do-Not-Reply@gov.nt.ca]  
Sent: September-16-14 11:16 PM  
To: Beth Collinson@gov.nt.ca; donn@theedge.ca  
Cc: datamanagement\_yk@gov.nt.ca  
Subject: Upcoming End of Current Employment - Yellowknife - M

Based on the information in the GNWT's Human Resource Information System, the expected end date of employment for **Donn MacDougall** (ID: 170-0) is 2014-10-07.

If there are plans to extend the employment of **Donn MacDougall** in their current job, please ensure that the request for extension is completed and sent to Human Resources as soon as possible.

If this request has been sent in the past few days, please ignore this message.

This is a system-generated email. Do not reply to this email.



Competitions:

[Redacted]

12409 - Legal Counsel – Screening Stage

- Section 14 (1)(a)
- Note: Donn MacDougall – Section 14 (1)(a)

11675 - Deputy Registrar, Land Titles

- Committee: [Redacted]
- References received late on Friday afternoon, and copy is placed in my file cabinet.
- Need to work out promotion rules, then draft the verbal offer
- Section 14 (1)(a)
- Section 14 (1)(a)

[Redacted]

Competition No.: 11675				Position Title: Deputy Registrar, Land Titles - Operations				Appeal Period Ends:			
Applicant Name	Type	AA Status	Relevant Education	Relevant Experience	Remarks	SO:	SINSL:	SISLY:	Appeal Regrets Date/Method		
Section 23(1)			Section 23(1)	Section 23(1)	Section 23(1)			✓			
Section 23(1)	Emp	INA		Section 23(1)	Section 23(1)	X					
Section 23(1)	Ext	NP		Section 23(1)	Section 23(1)						
Section 23(1)	Ext	NP		Section 23(1)	Section 23(1)	X					
Donald MacDougall	Emp	NP									
Screened			Screened	Screened	Screened						
Date Screened: 30 June 2014.				Date Screened: June 30/14				Date Screened: June 30/14			
*Note: Interview Status = (SISLY) - Screened In – Short listed // (SINSL) Screened In – NOT Short listed // (SO) Screened Out											




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Government of  
Northwest Territories

Gouvernement des  
Territoires du Nord-Ouest

Ms. Elaine Keenan-Bengts  
Information and Privacy Commissioner  
5018 - 47th STREET  
PO BOX 382  
YELLOWKNIFE NT X1A 2N2

DEC 08 2017

Dear Ms. Keenan Bengts:

**Request for Privacy Review: Your File 17-225-4**

Your privacy review notice in relation to this file was received by the Department of Justice on November 6, 2017. The privacy review relates to concerns brought forward by Mr. Donald MacDougall that occurred during the time period of March 2014 and December 2014.

I have responded to the questions you raised as follows:

1. I would at this time ask that you provide me with the Department's comments and an explanation as how the breaches were allowed to occur and to continue, notwithstanding Mr. MacDougall's attempts to have his supervisor deal with the situation. There is some suggestion in the document provided that for some reason the Department was unable to block Mr. MacDougall's access to the personal information of other employees because he was still on the payroll and, while employed, had managerial responsibilities over a number of individuals.

**Response**

*The Department was aware of the initial issues that lead to Mr. MacDougall receiving notices through the PeopleSoft automated notification system of former employees' leave and step increments. The Director of the Legal Registries Division followed up with designated Client Services Manager with the then Department of Human Resources (now the Department of Finance), and believed that the necessary steps had been taken to address the issue. The Department of Justice was unaware that the issue continued until December.*

.../2

P.O. Box 1320, Yellowknife NT X1A 2L9

C. P. 1320, Yellowknife NT X1A 2L9



*On review of this matter we can confirm this incident took place due to an unusual situation where the applicant - who during this time period, was under a termination agreement with the Department - continued to be identified as an active employee in the PeopleSoft system. This occurred because the system is designed to identify*

*employees as being either active or terminated. Because of the unusual nature of a termination agreement where the employee continued to be compensated, (and therefore considered active by the system), a request for a manual override of the notification system should have taken place. The manual override would have allowed for the applicant continuing compensated but would have addressed the delegation notices that were sent to him during that time period.*

*In light of this incident, the Department of Justice is working with the Department of Finance to implement a process that will identify the need for manual overrides to the notification system for employees identified on a termination agreement.*

- 2. I am particularly interested in understanding how access to PeopleSoft is controlled, and what limits are in place to block individuals to the personal information of other employees.**

**Response**

*The PeopleSoft system is structured as a role-based access control system. This type of system restricts access to authorized users, and within the user group access is further restricted to information necessary for the user to perform their duties. Authorized GNWT personnel may have access to an employee's personal information depending on the responsibilities of their position, what information they can access and view differs depending on those responsibilities.*

.../3

**From:** [Sylvia Haener](#)  
**To:** [Nicole McNeil](#); [Brad Patzer](#); [Mark Aitken](#)  
**Subject:** access request - Donn Macdougall  
**Date:** Tuesday, October 07, 2014 2:07:05 PM  
**Attachments:** [Scanned from a Xerox multifunction device.pdf](#)

Please see the attached which Denise Anderson just provided me. Much of this request relates to situations that arose due to his being considered terminated and us then **trying to negotiate a termination agreement**. He signed the agreement last week, but it is still under review by us and has not been signed by the GNWT. Denise wanted to transfer this request in its entirety to finance as she thought it related to Psoft. I advised her that I needed to provide it to legal counsel and we need to seek advice in relation to it. Brad - Help!!!!!!

Sylvia Haener,  
Deputy Minister, Department of Justice,  
Government of the Northwest Territories.  
phone: 867-920-6197  
fax: 867-873-0307  
e-mail: [sylvia\\_haener@gov.nt.ca](mailto:sylvia_haener@gov.nt.ca)

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-----Original Message-----

From: [gnwt\\_scanner@gov.nt.ca](mailto:gnwt_scanner@gov.nt.ca) [[mailto:gnwt\\_scanner@gov.nt.ca](mailto:gnwt_scanner@gov.nt.ca)]  
Sent: Tuesday, October 07, 2014 2:00 PM  
To: Sylvia Haener  
Subject: Scanned from a Xerox multifunction device

Please open the attached document. It was scanned and sent to you using a Xerox multifunction device.

Attachment File Type: pdf

multifunction device Location: machine location not set  
Device Name: CHY0605\_X9201

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In PeopleSoft, managers/directors with direct report employees have access on PeopleSoft to their employee's leave information. They are able to view an employee's leave requests and leave balances, their PeopleSoft number and the types of leave requested. For example the code "AOI" indicates the leave is considered annual leave, whereas "SL1" identifies sick leave. Only the code is available for review, and no further detail on the underlying reason for the leave is identified.

Managers and Directors who are also responsible for budgets in relation to salary dollars are also able to view limited budget information related to salary such as the employee's pay schedule and step. They are also provided with access to performance appraisal information if the employee falls under their supervision.

In the Department of Finance access to employee personal information is restricted to this type of role-based access, and there are a variety of roles identified within the system permitting different access for different uses. The system is designed to limit the personal information of employees to those who are authorized to view it and use it.

**3. Is this a problem "government wide" or only for this particular division in the Department of Justice?**

This was an unusual situation involving a management employee on a termination agreement. Currently we are unaware of any similar issues elsewhere in the GNWT, but we recognize the need to address the gap that resulted in this issue, and are taking the necessary steps in cooperation with the Department of Finance.

Response

**4. Also what protocol is in place for decommissioning government email addresses after an employee leaves.**

Response

The responsibility for decommissioning a government email account rests with the home department of the former employee.

.../4

The Department of Finance provides guidelines outlining steps that should be taken when an employee leaves their current position, including decommissioning the employee's email address, but individual departments are directly responsible for initiating requests to the Technology Service Center to undertake this step.

We are unable to explain why the account was left open for almost six months, but we are taking steps to address this issue internally. The Department of Justice is revising its current protocol on the "off boarding" of Justice employees, and will permit an employee's email account to remain open for a maximum two week period to identify that the employee is no longer with the Department, and to inform correspondents where their inquiries may be redirected.

Employees will be made aware of this protocol prior to leaving the Department.

**5. Was there a message on Mr. MacDougall's email that advised the public that he was no longer employed with the GWNT?**

Response

As this took place in 2014, and the previous director is no longer with the Department of Justice, we are unable to confirm if there was an automated message placed on Mr. MacDougall's government email.

**6. How long did his email remain active?**

Response

Our records indicate that the email account was active up to six months past the date of the complainant's last active working day, so approximately September 2014. We are unable to confirm the exact date, but from a review of the applicant's emails, we note it remained active into September 2014.

.../5



- 5 -

7. Did Mr. MacDougall continue to have access to that account notwithstanding that he was no longer employed with the GNWT?

Response

*Mr. MacDougall did not have access to his government email account after March 14, 2014.*

I trust we have answered your questions. If you have additional questions or concerns you would like to address in relation to this matter, please write to me or call (867) 767-9256, extension 82100.

Sincerely,



Denise Anderson,  
Manager  
GNWT Access and Privacy Office  
Department of Justice

**EMAIL I**



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## RE: Your letter of Feb 2, 2018 - Missing Emails



Denise Anderson <Denise\_Anderson@gov.nt.ca>

To: Donn MacDougall



2/9/2018

Good Morning Mr. MacDougall

On receipt of your email earlier this week I did go back and review the listings we have sent. I also went back to the pst file I used in our response.

I had not noted the date of the Thursday, 2/5/2015 email but I can confirm there were no other emails between the July 23, 2014 email in the pst file that I was processing.

As I was working off of the pst file relating to the emails in question I believed this included all the emails there were.

I am now following up on the inconsistencies you have noted and will get back to you next week with answers to the questions you have raised.

I do however apologize to you that my assumption that the pst file included the full date range of emails has resulted in an inaccurate responses to your initial request and your second request.

Additionally, I will also inform the Information and Privacy Commissioner on the errors in my earlier responses on this matter, as it is still under review.

Denise Anderson

**From:** Donn MacDougall [<mailto:donn.macdougall@gmail.com>]

**Sent:** Tuesday, February 06, 2018 2:33 PM

**To:** Denise Anderson

**Subject:** Your letter of Feb 2, 2018 - Missing Emails

Denise,

I have your letter of February 2, 2018, and I thank you for your efforts to get the information to me.

You have provided a printout of emails received at my previous email address. Unfortunately, that list appears to be incomplete.

The most recent email is dated "Thu 2/5/2015 7:09 AM" from 🌸🌸🌸🌸🌸🌸

The next most recent email is dated "Wed 7/23/2014 10:36 AM"

There is a gap here of over 6 months. This gap includes the month of September. You may recall that your letter of December 8, 2017 to the Information and Privacy Commissioner stated, at page 4:

"Our records indicate that the email account was active up to six months past the date of the complainant's last active working day, so approximately September 2014. We are unable to confirm the exact date, but from a review of the applicant's emails, we note that it remained active into September 2014."

You may also recall that in an email string dated September 17, 2014 Gary MacDougall mentions that my former email still exists and is redirected to him.

Could you please provide me with any further emails that were sent to my previous email address following July 23, 2014.

Thank you,

Donn



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## **EMAIL II**



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## RE: Your letter of Feb 2, 2018 - Missing Emails



Denise Anderson <Denise\_Anderson@gov.nt.ca>  
To: Donn MacDougall



2/16/2018

Good Morning Mr. MacDougall

I do have a follow up on the questions you raised.

I have sent our update on this issue, to the Information and Privacy Commissioner as this matter is under review with her office.

I am looking to forward you a copy of that letter, however I will be password protecting the letter to you.

The password for the document will be donnm123

I would note I did not answer your more recent question below in the response.

As noted in the letter of December 8, 2017, we do not know why the email account remained open and I'm unable to speculate on why it was. I can however confirm that is not in keeping with our usual process. was open for that length of time but as we confirmed, this was not in keeping with normal process we have for the closing of an employee email account. As the was not in keeping with our usual process.

The letter will be sent by separate email today.

And again, I apologize that my initial response was inaccurate.

My letter does explain what led to the error however the error was mine and I apologize this resulted in an inaccurate earlier accounting.

Sincerely  
Denise Anderson

**From:** Donn MacDougall [<mailto:donn.macdougall@gmail.com>]

**Sent:** Friday, February 09, 2018 10:56 AM

**To:** Denise Anderson

**Subject:** Re: Your letter of Feb 2, 2018 - Missing Emails

Denise,

I again thank you for your efforts.

I do have one additional question. In your letter of December 8, 2017, you make the statement:

"We are unable to explain why the account was left open for almost six months [...]"

Can you explain what this statement means?

Do you mean that there is an explanation but that you are unable to share it (by reason of a claim of legal privilege or some other reason)?

Thank you,

Donn




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## **EMAIL III**



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Government of  
Northwest Territories

Gouvernement des  
Territoires du Nord-Ouest

Ms. Elaine Keenan-Bengts  
Information and Privacy Commissioner  
5018 - 47th Street  
PO BOX 382  
YELLOWKNIFE NT X1A 2N2

FED 14 2018

Dear Ms. Keenan Bengts:

**Request for Privacy Review: Your File 17-225-4**

Your privacy review notice in relation to this file was received by the Department of Justice on November 6, 2017. The privacy review relates to concerns brought forward by Mr. Donald MacDougall that occurred during the time period of March 2014 and December 2014.

On February 6, 2018, I became aware of errors in relation to our earlier response on this matter. The error relates to the time frame the applicant's former work email account was active. This issue was raised by the applicant directly to my office, when he noted that the documents we disclosed as part of his access to information request, did not match the time frames of the response I previously provided you.

On receipt of his questions I undertook a further review and realized I had erred in the time frames as I had relied on the pst file that I obtained from the Justice Informatics division, when I should have followed up with the Technology Service Center. This error was mine, and I apologize this has resulted in delays and confusion on this file.

While the majority of our initial responses have not changed, I have updated our responses to two questions you had raised, questions five and six. The updated responses are as follows;

**5. Was there a message on Mr. MacDougall's email that advised the public that he was no longer employed with the GWNT?**

**Initial Response**  
*As this took place in 2014, and the previous director is no longer with the Department of Justice, we are unable to confirm if there was an automated message placed on Mr. MacDougall's government email.*

.../2

P.O. Box 1320, Yellowknife NT X1A 2L9

[www.gov.nt.ca](http://www.gov.nt.ca)

C. P. 1320, Yellowknife NT X1A 2L9



Updated Response

On follow up with the Technology Service Center,(TSC) they are still unable to confirm if an autoreply message had been created as that would have taken place within the Department and not the TSC.

**6. How long did his email remain active?**

Initial Response

*Our records indicate that the email account was active up to six months past the date of the complainant's last active working day, so approximately September 2014. We are unable to confirm the exact date, but from a review of the applicant's emails, we note it remained active into September 2014.*

Updated Response

We confirmed through the TSC service request "ticket" that the request to close the email address took place February 12, 2015. The email account was then disabled, and the account was held for 30 days, as is TSC protocol. The account was deleted on March 16, 2015.

The applicant was recently provided with copies of his personal information for his requested dates, that we obtained from the pst file. This file is the email holding of an individual on the GNWT outlook system. Once the applicant noted the inconsistency we followed up with the TSC. However we were unable to obtain any further records relating to this account, as they no longer exist.

Back-up tapes that would allow access to an email account are held for a minimum of two years and then this information is deleted. The destruction of tapes dating back a minimum of two years is in keeping with the Disaster Recovery Policy implemented by the Technology Service Center.

The applicant's pst file was obtained through the Justice Informatics division and they were not accessible to any other employees. It is unusual to have a pst held by a program area for any length of time. The usual protocol is that an employee who is leaving their position within the Department is required to store all work related emails to the program's record keeping system and file them accordingly, either through paper or electronic retention.

.../3

However when an employee is terminated this work is usually undertaken by the individual's supervisor. The emails held in the pst file, included 510 emails, between March 12 and July 23, 2014. There was however one email on a separate folder that noted a date of February 5, 2015. It was this email that the applicant asked for more explanation on. On confirming that email we undertook a further review directly with the TSC.

If you have additional questions or concerns you would like to address in relation to this matter, or the error that lead to this updated response, please write to me or call (867) 767-9256, extension 82100.

Sincerely,



Denise Anderson  
Manager  
GNWT Access and Privacy Office  
Department of Justice



2/13/2018

Ticket Overview

Record #1

Donald MacDougall

Percent Completed 100%

Request

Donald MacDougall

Ticket Status

Closed

Assigned Queue

Service Desk

Resolution Date

Feb 12, 2015

Description and Resolution

Description

Please delete the email account for Donald MacDougall. These emails have been autoforwarded to me but the time has come to delete the account.

EMAIL IV



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## 2018 NTIPC 12

### NORTHWEST TERRITORIES INFORMATION AND PRIVACY COMMISSIONER Review Report 18-184

File: 17-225-4  
July 3, 2018  
Citation: 2018 NTIPC 12

#### BACKGROUND

The Complainant filed a request with my office to review whether or not his own personal information and the personal information of other employees was inappropriately collected, used and/or disclosed by the Department of Justice, his former employer. The complaints all arise from the Department's apparent failure to decommission the Complainant's email address at the end of his employment or to remove his permissions to access the GNWT servers. In particular, the Complainant alleged:

- a) as a manager, he had had access to the "Peoplesoft" files of his employees and he continued to have access to sensitive third party personal information about his former employees through "PeopleSoft" long after he was no longer employed with the GNWT and no longer had any reason to have access to such information.
- b) that he continued to receive automated email messages at his personal email account (@gmail.com) containing sensitive personal information about third parties in the workplace for up to eight months after his departure;
- c) that his government email address remained active and monitored by another employee for at least six months after his departure;

He said that when he left his employment with the GNWT in 2014, his status in PeopleSoft was not properly updated to reflect his status as a former employee. Instead his access



rights as per his employment duties were delegated to his former supervisor without his knowledge or consent.

He noted as well that because his status in PeopleSoft was not properly updated, he retained access to the personal information of eleven employees within his former department. This allowed him access to information such as vacation leave accumulated and granted, sick leave accumulated and granted, overtime and lieu time as well as other personnel management information.

In addition to the information he had access to when logged into PeopleSoft, the program was also forwarding him auto-generated emails containing the personal information of other employees, including wage information, requests for approval of leave, and information about another employee's end of contract.

He said that he brought his concerns regarding this issue to the attention of various individuals within the GNWT over a period of several years. With respect to his apparent ongoing access to the PeopleSoft information of other employees, he was told that because of the circumstances of his departure (he was no longer working for the Department but was still an "employee" for the purpose of pay and benefits for a period of six months), though he was no longer an employee, he was still being paid, which meant that he still had to be attached to a position number and because that position number was that of a manager, it included various permissions needed to supervise employees.

He also noted that although he brought the matter to the attention of various individuals within the GNWT a number of times, he was never asked to delete, destroy or return the personal information in his possession. In fact, he retained that information at least until he filed his complaint with my office in late 2017 because he included several screen shots to support his complaint.

Finally, he noted that because the public body did not decommission his email address but instead had another supervisor monitoring it, his privacy was breached in that there

**Call Details**

No. :	164006	Date :	3/14/2014 10:23:09 AM
User :	Baggs, Lori	Phone :	920-8027
Site :	Yellowknife HRSC	Department :	Human Resources
Call Type :	HR Systems	Sub Type :	Approval Access
Operator :	cbadcock	Category :	HRIS Priority 1
Status :	Closed		
Employee ID :	42869 / 0, 128744 / 0, 128170 / 0		
Due Date :			
Summary :	FW: Donn MacDougall - Peoplesoft Approval group 82AZ1		
Problem :	Please reassign this approval group as requested until December 12, 2014 or further notice. Donn MacDougall's managers access should also be ceased.		

Thanks

Lori

From: Gary MacDougall

Sent: Friday, March 14, 2014 9:04 AM

To: Lori Baggs

Subject: Donn MacDougall - Peoplesoft Approval group 82AZ1

Hi Lori,

I am not sure if you are aware but Donn MacDougall will no longer be employed in Legal Registries. Can you please initiate the steps necessary to assign his approval group 82AZ1 to me as soon as possible?

Thanks.

Gary

Gary MacDougall

Director, Legal Registries



was a very real possibility that emails of a personal nature were sent to his former GNWT address and were read by the supervisor receiving his emails. He quoted from the 2016/2017 Annual Report of the Information and Privacy Commissioner of the Northwest Territories in which Review Report 17-158 was discussed:

[...] the failure of the public body to decommission the Complainant's email address after his departure constituted a breach of the privacy of not only the Complainant, but also of others who sent emails to that address not knowing that someone other than the complainant was receiving them. She found that a public body email address is an identifier attached to a person's name and that the email address assigned to the Complainant during his employment with the public body was his personal information, even though the address itself belongs to the public body. As such, keeping that email active means that there was an ongoing breach of the privacy of not only the Complainant, but potentially of third parties communicating with that email address thinking that the person reading the correspondence is the identified person. She found that six months is far too long to allow an email address to remain active after an individual is no longer an employee of the public body.

## THE DEPARTMENT'S RESPONSE

I asked the Department to explain, firstly, how the breaches were allowed to occur and to continue, notwithstanding the Complainant's attempts to have his supervisor deal with the situation. The Department acknowledge that it was aware of the initial issues that led to the Complainant receiving notices through the PeopleSoft automated notification system which sent notices to his personal email address (not his GNWT email address) about the leave and step increments of some other employees. The Director of the division followed up with the designated Client Services Manager with the then Department of Human Resources (now the Department of Finance), and believed that the necessary steps had been taken to address the issue. **The Department of Justice was unaware that the issue**

**had continued until December.** They indicated that in investigating the matter, they determined that the incident took place due to an unusual situation where the applicant - who during this time period, was under a termination agreement with the Department - continued to be identified as an active employee in the PeopleSoft system. This occurred because the system is designed to identify employees as being either active or terminated. Because of the unusual nature of a termination agreement where the employee continued to be compensated, and therefore considered active by the system, a request for a manual override of the notification system should have taken place. The manual override would have allowed for the applicant to continue to be compensated but would have addressed the delegation notices that were sent to him during that time period. They noted that as a result of this incident, the Department of Justice was working with the Department of Finance to implement a process that will identify the need for manual overrides to the notification system for employees identified on a termination agreement.

In response to my request for more information about how access to the PeopleSoft program is controlled and what limits are in place to block access among employees, the Department advised as follows:

The PeopleSoft system is structured as a role-based access control system. This type of system restricts access to authorized users, and within the user group access is further restricted to information necessary for the user to perform their duties. Authorized GNWT personnel may have access to an employee's personal information depending on the responsibilities of their position, what information they can access and view differs depending on those responsibilities.

In PeopleSoft, managers/directors with direct report employees have access on PeopleSoft to their employee's leave information. They are able to view an employee's leave requests and leave balances, their PeopleSoft number and the types of leave requested. For example the code "AD/"



indicates the leave is considered annual leave, whereas "SL1" identifies sick leave. Only the code is available for review, and no further detail on the underlying reason for the leave is identified.

Managers and Directors who are also responsible for budgets in relation to salary dollars are also able to view limited budget information related to salary such as the employee's pay schedule and step. They are also provided with access to performance appraisal information if the employee falls under their supervision.

...The system is designed to limit the personal information of employees to those who are authorized to view it and use it.

I also asked the Department to advise me as to the protocol in place for decommissioning government email addresses after an employee leaves. They noted that the responsibility for decommissioning government email addresses rests with the home department of the former employee. The Department of Finance had provided guidelines outlining steps to be taken when an employee leaves, including decommissioning the email address. Each individual department, however, is responsible to send an appropriate request to the Technology Service Centre to undertake this step.

They were unable to explain why this particular account had been left open for almost six months, but noted that steps were being taken to address the issue, including a revision to its "offboarding" protocol. This revision will allow an employee's email account to remain open for a maximum of two weeks to identify that the employee is no longer with the Department and to inform correspondents where their inquiries can be redirected. Further, employees will be made aware of this protocol prior to their departure.

The public body did confirm that the Complainant did not have access to his email account after his departure.

## THE COMPLAINANT'S FURTHER SUBMISSIONS

I provided the Complainant with a copy of the Department's submissions and invited him to provide any further input he thought might assist me in my review. I asked him, in particular, to address why he was receiving automated messages from PeopleSoft at a personal email address. He noted that:

The mechanism to change a preferred email in PeopleSoft is quite simple - the option appears under the "self service" tab under "personal information" (see page 4 attached). Note that setting a preferred email is as easy as selecting a check box. Please also note that it is possible to enter any email address to be used as the preferred email address.

Because he would no longer have direct access to his government email account, he changed his preferred email address before he left so that he could continue to receive important information and documents, such as notifications that his T4 slip was available. He notes that when the public body changed his preference back to his old government address, they also cut off his ongoing access to his own PeopleSoft information, which may have created a number of difficulties for him.

## DISCUSSION

The *Access to Information and Protection of Privacy Act* defines personal information as information about an identifiable individual, including:

- the individual's name, home or business address or home or business telephone number,
- an identifying number, symbol or other particular assigned to the individual, and
- information about the individual's educational, financial, criminal or employment history



Section 42 of the Act requires public bodies to protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal. This applies to the personal information of employees as much as to the personal information of the general public.

Section 47.1 prohibits employees from disclosing any personal information received by the employee in the performance of services for a public body, except as authorized.

Sections 43 and 48 set out when public bodies can, respectively, use or disclose personal information in their possession and/or control. These purposes include, among other things:

- for the purpose for which the information was collected or compiled or for a use consistent with that purpose;
- where the individual the information relates to has identified the information and consented, in the prescribed manner, to its disclosure;
- for the purpose of hiring, managing or administering personnel of the Government of the Northwest Territories or a public body;
- to an officer or employee of the public body or a member of the Executive Council, where the information is necessary for the performance of the duties of the officer or employee or the member of the Executive Council;

1. Decommissioning of email address.

This is not the first time that the failure to decommission an email address has led to privacy concerns. I reviewed a similar issue last year in relation to an employee who had ceased working with Aurora College in Review Report 17-158. In that report I noted that:

A public body email address is an identifier attached to a person's name. As such, the email address assigned to the Complainant during his employment with the public body was his personal information, even though

the address itself belongs to the public body. As such, keeping that email active means that there is an ongoing and significant breach of the privacy of not only the Complainant, but potentially of third parties communicating with that email address thinking that the person reading the correspondence is the identified person. Six months is far too long to allow an email address to remain active after an individual is no longer an employee of the public body.

I noted that although government email addresses are intended primarily to allow employees to communicate with others within the public body and for the purpose of conducting the business of the public body, employees are also allowed to use these accounts for at least limited personal use. This means that giving any other person access to the retained emails in the account is a potential breach of privacy. It is also a potential breach for those thinking that they are communicating with the individual on a personal basis when someone else is monitoring those emails or they are being redirected to another employee. Keeping the email active without clearly indicating that the Complainant is no longer employed with the public body creates a risk of a breach of privacy for unsuspecting third parties.

I understand that when an employee ends his/her employment, the content of his/her email must be available, at least for a period of time, to allow it to be reviewed and important records retained. Most email in a GNWT account will be the information of the GNWT and it needs to be properly filed and indexed in accordance with good file management practices. It seems to me, however, that this can be done after the account has been shut down so that no new communications can be sent or received from that email address. What should happen when an employee leaves is that a message should be placed on the account immediately to make it clear that the email address is no longer in use. The message should be discrete (ie: If you are wanting to communicate with the [position], please contact [abc@gov.nt.ca](mailto:abc@gov.nt.ca)). This message should be left for a reasonable period of time (the two weeks suggested by the Department seems to be a good number) and then the email address should be completely shut down.



I **recommend** that the department do a thorough review of its policies and procedures with respect to the management of email accounts and, in particular, what must happen when an employee ceases to work for the GNWT. I further **recommend** that there be one or two individuals within the department or within each division of the department responsible for ensuring that these policies are followed when an employee leaves.

## 2. Ongoing Access to PeopleSoft

This situation creates a number of issues for me. The most significant of these is the fact that when the Complainant changed his preferred email address for receiving notices, it resulted in notices being sent to him not only with respect to his own employment matters, but also about other employees who he used to supervise. The fact that he received automatic email from the system about the employment status of his former staff members is clearly a breach of their privacy.

While the public body suggests that this is an “unusual” circumstance in that the Complainant remained on the payroll after his actual employment, I am not convinced that this situation is all that unique. Many people retire after many years with the GNWT and take unused holidays immediately prior to their retirement, sometimes several months. They are no longer “employees” with any authority or right to have access to the files of those they might have managed, though they will continue to be paid for a period of time after they are no longer in the office. Based on the public body’s comments, each one of these people will continue to be associated with a position number so that they can continue to be paid, which means that they will continue to have access to the PeopleSoft information of their former staff and, like the Complainant in this case, would likely to continue to receive automatic notifications from the system about those employees. This is unacceptable.

A second concern is that any manager or supervisor can designate a private email address, outside the relative security of the GNWT system, in his/her PeopleSoft preferences such that notifications about third parties’ employment and benefits are being

sent to that outside email address rather than to a secure GNWT address. This is a breach of the privacy of those employees and should not be allowed or even possible.

I therefore **recommend** that a technical solution be found and implemented immediately on a system wide basis that

- a) allows a former employee to continue to have access to his/her PeopleSoft information for as long as needed to ensure that all employment-related correspondence is finalized; and
- b) allows a supervisor/manager to set his/her preferences in PeopleSoft so that he receives notices about his own employment matters at a personal email address rather his/her GNWT assigned address;

BUT

- c) does not give that former employee access to or notices about any other employee; and
- d) does not forward messages from PeopleSoft about any other employee outside of the GNWT system

I further **recommend** that specific employees, either within the Technical Services Centre or within each department or division, be clearly designated as being responsible for appropriate “off-boarding” of employees so that these appropriate procedures become routine and consistent.

To the extent that this is outside the mandate of the Department of Justice, I **recommend** that this Report be provided to the appropriate department for implementation.

Finally, I **recommend** that steps be taken to ensure that any third party personal information received by/obtained by the Complainant since the end of his employment with the GNWT have been returned and/or destroyed.

Elaine Keenan Bengts  
Information and Privacy Commissioner



**Paperback available on Amazon:**  
[www.amazon.ca/dp/B0BLB9W1DN](http://www.amazon.ca/dp/B0BLB9W1DN)

## **THE NEGOTIATION**



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[www.amazon.ca/dp/B0BLB9W1DN](http://www.amazon.ca/dp/B0BLB9W1DN)

**2018-027-NM023**

2018-027-NM023

**From:** [REDACTED]  
**To:** [REDACTED]  
**Subject:** FW: Termination Agreement  
**Date:** Tuesday, April 15, 2014 4:07:36 PM

Interesting...he wants to be able to discuss it

**From:** [REDACTED]  
**Sent:** Tuesday, April 15, 2014 3:58 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Termination Agreement

I agree [REDACTED], #14 & 15 are essential to the agreement and the one of the reasons it was agreed that a greater notice period would be provided in tradeoff for both the release and confidentiality clause.

Section 14 (1)(a)

Did you want me to discuss with [REDACTED] to prepare a response.

**From:** [REDACTED]  
**Sent:** Tuesday, April 15, 2014 2:09 PM  
**To:** [REDACTED]  
**Subject:** FW: Termination Agreement

Your thoughts on this. The whole point of the agreement is to get the boiler plate 14 and 15.....  
Thanks.

Section 14(1)(a)



██████████  
 Deputy Minister, Department of Justice,  
 Government of the Northwest Territories.  
 phone: 867-920-6197  
 fax: 867-873-0307  
 e-mail: ██████████

This electronic message and any files transmitted with it are confidential and intended only for the named recipient(s). If you are not the intended recipient please be advised that any disclosure, copying, distribution or use of the contents of this message is strictly prohibited. If you receive this message in error or are not the named recipient, please notify the sender immediately by return e-mail, delete and destroy all copies of this message. E-Mail communications are susceptible to interception by unauthorized parties. If you do not wish the sender to communicate by e-mail please inform the sender immediately.

**From:** ██████████  
**Sent:** Tuesday, April 15, 2014 1:33 PM  
**To:** ██████████  
**Subject:** Re: Termination Agreement

Thank-you Ms. Haener. I have reviewed the agreement and note that it introduces new material terms not mentioned in the agreed-upon proposal. We request an amended agreement that excludes articles 9, 14, and 15, which will more accurately reflect the accepted proposal.

Thanks,  
 Kristan

**From:** ██████████  
**Sent:** Thursday, April 10, 2014 10:28 AM  
**To:** ██████████  
**Cc:** ██████████  
**Subject:** Termination Agreement

Ms. Good morning, Ms. McLeod

I believe that you are returning to the office on April 11. Please find attached an Agreement reflecting the counter proposal that you have accepted on behalf of your client. Once Mr. MacDougall has signed the Agreement please scan it back to me. Thank you for the efforts you have made to resolve this matter so expeditiously.

██████████  
 Department of Justice, GNWT

**From:** ██████████  
**To:** ██████████  
**Cc:** ██████████  
**Subject:** RE: Termination Agreement  
**Date:** Monday, July 21, 2014 3:54:45 PM  
**Attachments:** [image001.png](#)  
[image002.jpg](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)  
**Sensitivity:** Confidential

I reviewed this with ██████████ today. Section 14(1)(b)(i) ██████████. (For example, if he gets a position with WSCC. Who will advise us? The employee or WSCC?) Section 14(1)(b)(i) ██████████

We also had the same concerns with #3 as ██████████ Section 14(1)(b)(i) ██████████

**From:** ██████████  
**Sent:** Monday, July 21, 2014 9:23 AM  
**To:** ██████████  
**Cc:** ██████████  
**Subject:** RE: Termination Agreement  
**Sensitivity:** Confidential

I have reviewed and I'm just not sure how we are going to BF #2. I guess that will have to be something discussed in-house with Benefits, and Data Management, if Mr. MacDougall does get another job within the GNWT.

Section 14(1)(b)(i) ██████████  
 ██████████  
 ██████████  
 ██████████

Other than that, I am good.

██████████



2018-027-NM077

1 of 3

**From:** [REDACTED]  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Termination Agreement  
**Date:** Monday, July 21, 2014 9:11:57 AM  
**Attachments:** [image001.png](#)  
[image002.jpg](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)  
**Sensitivity:** Confidential

Good morning [REDACTED],

There is no action required by payroll.

Thanks,  
[REDACTED]

---

**From:** [REDACTED]  
**Sent:** 21 July, 2014 9:04 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Termination Agreement  
**Importance:** High  
**Sensitivity:** Confidential

Morning folks,  
Hate to push, but the parties are waiting on us to be able to sign off the Termination Agreement.  
Have you had opportunity to [review the draft language, and in particular paragraphs 2 and 3?](#)

Thanks,  
[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Wednesday, July 16, 2014 2:28 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Termination Agreement  
**Sensitivity:** Confidential

Thanks [REDACTED]. Try this version.

---

**From:** [REDACTED]  
**Sent:** Wednesday, July 16, 2014 2:26 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Termination Agreement  
**Sensitivity:** Confidential

[REDACTED], I can't open the attachment.

2018-027-NM077

[REDACTED]  
**From:** [REDACTED]  
**Sent:** Wednesday, July 16, 2014 2:24 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Termination Agreement  
**Importance:** High  
**Sensitivity:** Confidential

Hi ladies,

Department of Justice is looking for feedback on proposed terms of a Termination Agreement for Donald MacDougall. There has been a working draft for some time and I believe some of you may have previously reviewed the initial terms when requested by [REDACTED] (who is now on maternity leave).

The agreement includes pay in lieu of notice until February 2015. [Section 15\(c\)](#)

[REDACTED]  
[REDACTED]  
[REDACTED] DOJ wants to agree to this.

Obviously, we need to ensure you are all ok with this, have a practical way of doing it, and are comfortable with the language being proposed.

[Please review the proposed language at paras. 2 and 3 in particular.](#)

If you could provide feedback as soon as possible that would be greatly appreciated.

Thanks,  
[REDACTED]



[REDACTED]  
**Manager Accommodations/Bargaining/Investigations (ABI)**  
**Labour Relations**

Department of Human Resources  
Government of the Northwest Territories  
P.O. Box 1320 Yellowknife, NT X1A 2L9  
Tel: 1-867-920-3468  
Fax: 1-867-873-0105  
[www.hr.gov.nt.ca](http://www.hr.gov.nt.ca)





2018-027-NM078

**From:** [REDACTED]  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Termination Agreement  
**Date:** Monday, July 21, 2014 9:22:54 AM  
**Attachments:** [image001.png](#)  
[image002.jpg](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)  
**Sensitivity:** Confidential

I have reviewed and I'm just not sure how we are going to BF #2. I guess that will have to be something discussed in-house with Benefits, and Data Management, if Mr. MacDougall does get another job within the GNWT.

Section 14(1)(b)(i)

Other than that, I am good.

**From:** [REDACTED]  
**Sent:** Monday, July 21, 2014 9:04 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Termination Agreement  
**Importance:** High  
**Sensitivity:** Confidential

Morning folks,  
Hate to push, but the parties are waiting on us to be able to sign off the Termination Agreement. Have you had opportunity to review the draft language, and in particular paragraphs 2 and 3?

Thanks,

# THE SETTLEMENT



2018-027-NM121

Between

The Government of the Northwest Territories  
As represented by the Department of Justice  
(The GNWT)

- and -

Mr. Donald MacDougall

WHEREAS Mr. Donald MacDougall has been employed with the Department of Justice, GNWT, in the position of Manager of Securities and Corporate Registries, located in the City of Yellowknife, Northwest Territories;

AND WHEREAS the parties are terminating the employment relationship;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the following terms and conditions, the parties agree as follows:

1. Mr. MacDougall will be deemed to have resigned and cease to represent himself as an employee, agent or officer of the GNWT effective March 12, 2014.
2. Mr. MacDougall will be paid his regular salary on a bi-weekly basis commencing March 13, 2014 and terminating on the earlier of February 13, 2015 or the date upon which Mr. MacDougall commences employment within the public service of the GNWT at a rate of pay equal to or exceeding \$7.87 per hour (for greater certainty, Mr. MacDougall's ongoing periodic service in his sessional teaching position with Aurora College is not considered to be employment for the purposes of this agreement). Mr. MacDougall will be paid based on his fixed rate of pay as of March 12, 2014, being \$6.22 per hour, subject to the standard increase to \$7.87 effective April 1, 2014. In the event Mr. MacDougall commences employment within the public service of the GNWT prior to February 13, 2015 at a rate of pay lower than \$7.87 per hour, Mr. MacDougall will be paid the difference between that lower rate of pay and \$7.87 per hour until February 13, 2015. Upon acceptance of a position within the public service of the GNWT before February 13, 2015, Mr. MacDougall will notify the Deputy Minister of Justice in writing.

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[www.amazon.ca/dp/B0BLB9W1DN](http://www.amazon.ca/dp/B0BLB9W1DN)



3. Mr. MacDougall will receive payment of Northern Allowance, based on Yellowknife residency, during the period he is receiving his regular salary on a bi-weekly basis. Mr. MacDougall is entitled to the continuation of all benefits and pension entitlements (except as noted in paragraph 4 herein) during the period he is receiving his regular salary on a bi-weekly basis. In the event Mr. MacDougall commences employment within the public service of the GNWT prior to February 13, 2015, Mr. MacDougall will be entitled to receive benefits and pension entitlements based upon the greater of the rate of \$7.87 per hour or the hourly rate applicable to the new position.
4. Mr. MacDougall will not be entitled to earn any leave after March 12, 2014. The GNWT will not recover the overdrawn vacation leave entitlement for the 2013/2014 fiscal year of 15.85 hours.
5. GNWT will pay Mr. MacDougall's annual fees and Assurance Fund levy to the Law Society of the Northwest Territories for the 2014/15 practice year, in the cumulative total of \$1470.00, inclusive of GST.
6. All amounts payable to Mr. MacDougall under this agreement are subject to statutory and other applicable deductions.
7. Mr. MacDougall agrees that he will indemnify the GNWT and save the GNWT harmless against any liability the GNWT may have to the Receiver General of Canada or any other authority with respect to withholdings, deductions or payments of any kind.
8. The GNWT agrees to provide a neutral letter of reference indicating Mr. MacDougall was an employee of the Department of Justice from February 20, 2006 to March 12, 2014 and performed the duties of the Manager of Securities and Corporate Registries with the Legal Registries Division of the Department of Justice.
9. Mr. MacDougall will not grieve nor bring any civil actions on any matters arising out of his employment with GNWT as described herein. The GNWT and Mr. MacDougall acknowledge that this is a voluntary agreement and the parties are bound by its terms as full and final settlement of all employment related matters. Mr. MacDougall confirms that no complaint pursuant to the *Human Rights Act* has been filed and shall not be filed in the future with respect to this matter.
10. Mr. MacDougall understands and agrees that the aforesaid considerations are offered by the GNWT in the interest of amicably terminating the relationship between the parties and are not an admission of liability by

the GNWT.


11. Except as required by law, the parties undertake and agree to keep the terms of this Agreement in absolute and strict confidence, and not to disclose its contents to any person, except professional financial/legal advisors and immediate family. Except as required by law or upon request for materials or relevant information by an investigator appointed under the *Legal Profession Act*, the parties undertake and agree to keep in absolute and strict confidence the termination and the events leading up to the termination of Mr. MacDougall, including with respect to inquiries from possible future employers, outside of the public service of the GNWT, of Mr. MacDougall. Mr. MacDougall agrees that he is bound to maintain the confidentiality of confidential information to which he was privy while employed at the GNWT.
12. In the event of a breach by Mr. MacDougall of clause 9 of this agreement, as of the date such breach becomes known to the GNWT, the sum of money paid pursuant to this Agreement, to or for the benefit of Mr. MacDougall, shall become a debt immediately due and payable by Mr. MacDougall to the GNWT, but the indemnity and release given by Mr. MacDougall shall nevertheless remain binding and effective.
13. This agreement shall constitute a full and final settlement as well as a universal and definitive discharge of any amount due from any source or nature to Mr. MacDougall from the GNWT or any of its representatives in regard to any claims arising out of this matter. Mr. MacDougall specifically acknowledges and agrees that:
  - (a) the payment of the amounts set out herein constitute, and are accepted in consideration, and in full and final settlement of all claims, grievances, complaints and actions, whatsoever at law or in equity, in contract or in tort, which Mr. MacDougall has, had or hereafter can, shall or may have or, but for the execution of this Agreement, could or might have had, and arising out of or in any way connected with his employment with the GNWT or the termination of that employment, including, without limitation, claims or complaints for any damages, special damages, costs, expenses, declarations or other relief; and
  - (b) Mr. MacDougall, and his heirs, executors, administrators and assigns, hereby release and forever discharge the GNWT, its Ministers, officers, servants, agents and employees, and their personal representatives, heirs, executors, administrators, successors and assigns, of and from all manner of actions, causes of actions, suits, debts, covenants, claims, and demands that Mr. MacDougall had, now




has or that his heirs, executors, administrators or assigns may have in the future for or by reason of any cause, matter or thing whatsoever arising out of or in any way connected with his employment within the public service of the GNWT or the termination of it.

14. This agreement will enure to the benefit of and be binding upon the agents, heirs, executors, administrators, successors and assigns of all parties.
15. This agreement shall be interpreted and governed in accordance with the laws of the Northwest Territories and the laws of Canada as they apply in the Northwest Territories in effect on the termination date.
16. This written document is the entire agreement between the parties with regard to all employment related matters dealt with in it, and no other agreements, verbal or otherwise exists.
17. Mr. MacDougall acknowledges that he has read this agreement in its entirety, understands it, and agrees to be bound by its terms and conditions. He also confirms that he has consulted with legal counsel and obtained Independent legal advice prior to signing this agreement.
18. This agreement is made without prejudice, precedent or publicity.

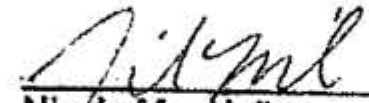
IN WITNESS WHEREOF the parties hereto have executed this Agreement at the City of Yellowknife in the Northwest Territories.

  
Donn MacDougall

Sept 19, 2014  
Date

  
Sylvia Haener  
Deputy Minister  
Department of Justice

Oct 10/14  
Date

  
Nicole MacNeil  
Director, Labour Relations  
Department of Human Resources

Oct 7/14  
Date

## REPUDIATION I



December 17, 2014

## PeopleSoft "Systems" Issues



Donn <donn@theedge.ca>  
To Brad\_Patzer@gov.nt.ca



12/17/2014

Brad,

You had previously provided information to my lawyer that the reason that my profile in PeopleSoft did not show the status of positions on I had applied was because of a "Systems" issue.

Seeking answers to this issue myself, I recently made an ATIP request including a request for information regarding why my PeopleSoft status was not being updated. The reply I got was that the answer was protected by legal privilege.

Can you provide me with a reasonable explanation of how the "systems" issue is now an issue protected by legal privilege?

Donn

---

**From:** Brad Patzer [[mailto:Brad\\_Patzer@gov.nt.ca](mailto:Brad_Patzer@gov.nt.ca)]  
**Sent:** September-17-14 1:43 PM  
**To:** Kristan Mcleod  
**Subject:** RE: Donald MacDougall

Hi Kristan

My apologies for the delayed response. I was trying to get an answer to the Peoplesoft issues; I don't have one yet. It appears to be a "systems" problem. I'm hoping that our "systems" people can resolve that soon. I will keep you posted.

As for your other question, I can advise that the "do not hire" notification will be removed upon execution of the agreement.

I am hoping we can execute the agreement notwithstanding the Peoplesoft issues. If so, could you have Mr. MacDougall sign the agreement in duplicate (or more), after which I will have it signed on my end.

If there is anything else we need to discuss please let me know. Thanks.

Brad

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[www.amazon.ca/dp/B0BLB9W1DN](http://www.amazon.ca/dp/B0BLB9W1DN)



**Paperback available on Amazon:**  
[www.amazon.ca/dp/B0BLB9W1DN](http://www.amazon.ca/dp/B0BLB9W1DN)

## **REPUDIATION II**



December 18, 2014

[SPAM]A delegation request from Donald MacDougall has been submitted for review and acceptance



donn.macdougall@gmail.com

To: donn.macdougall@gmail.com; Gary\_MacDougall@gov.nt.ca



Thu 12/18/2014 8:06 AM

Donald MacDougall or an administrator on behalf of Donald MacDougall has submitted a delegation request to you. Here are the details:

Transaction(s): TL\_MSS\_EE\_SRCH\_PRD

From: 2014-12-18

To: 2015-02-13

System to notify Donald MacDougall of each request:

You can review the request, then accept or reject the request, using the link below.

[http://ps.hr.gov.nt.ca/psp/hcmprod/EMPLOYEE/HRMS/c/HCDL\\_ALL.HCDL\\_MGR\\_DLG\\_HOME.GBL?](http://ps.hr.gov.nt.ca/psp/hcmprod/EMPLOYEE/HRMS/c/HCDL_ALL.HCDL_MGR_DLG_HOME.GBL?)

[Page=HCDL\\_MGR\\_DLG\\_HOME&Action=U&DELEGATOR\\_ID=119813&DELEGATOR\\_RCD=0&TRANSACTION\\_NAME=TL\\_MSS\\_EE\\_SRCH\\_PRD&TRANS\\_ALLOWED=A&FROM\\_DATE=2014-12-18](http://ps.hr.gov.nt.ca/psp/hcmprod/EMPLOYEE/HRMS/c/HCDL_ALL.HCDL_MGR_DLG_HOME.GBL?Page=HCDL_MGR_DLG_HOME&Action=U&DELEGATOR_ID=119813&DELEGATOR_RCD=0&TRANSACTION_NAME=TL_MSS_EE_SRCH_PRD&TRANS_ALLOWED=A&FROM_DATE=2014-12-18)

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[www.amazon.ca/dp/B0BLB9W1DN](http://www.amazon.ca/dp/B0BLB9W1DN)



[SPAM]Gary MacDougall has accepted a delegation request from Donald MacDougall



Gary\_MacDougall@gov.nt.ca

To: Gary\_MacDougall@gov.nt.ca; donn.macdougall@gmail.com



Reply

Reply All

Forward



Thu 12/18/2014 8:08 AM

Gary MacDougall has accepted a delegation request that you submitted. Here are the details:

Request Status: accepted

Transaction: TL\_MSS\_EE\_SRCH\_PRD

From: 2014-12-18

To: 2015-02-13

System to notify Donald MacDougall of each request:

Delegation Status: A

You can review the status of the request using the link below.

[http://ps.hr.gov.nt.ca/psp/hcmprod/EMPLOYEE/HRMS/c/HCDL\\_ALL.HCDL\\_MGR\\_DLG\\_HOME.GBL?](http://ps.hr.gov.nt.ca/psp/hcmprod/EMPLOYEE/HRMS/c/HCDL_ALL.HCDL_MGR_DLG_HOME.GBL?Page=HCDL_MGR_DLG_HOME&Action=U&DELEGATOR_ID=119813&DELEGATOR_RCD=0&TRANSACTION_NAME=TL_MSS_EE_SRCH_PRD&TRANS_ALLOWED=A&FROM_DATE=2014-12-18)

[Page=HCDL\\_MGR\\_DLG\\_HOME&Action=U&DELEGATOR\\_ID=119813&DELEGATOR\\_RCD=0&TRANSACTION\\_NAME=TL\\_MSS\\_EE\\_SRCH\\_PRD&TRANS\\_ALLOWED=A&FROM\\_DATE=2014-12-18](http://ps.hr.gov.nt.ca/psp/hcmprod/EMPLOYEE/HRMS/c/HCDL_ALL.HCDL_MGR_DLG_HOME.GBL?Page=HCDL_MGR_DLG_HOME&Action=U&DELEGATOR_ID=119813&DELEGATOR_RCD=0&TRANSACTION_NAME=TL_MSS_EE_SRCH_PRD&TRANS_ALLOWED=A&FROM_DATE=2014-12-18)

December 20, 2014

Reported Time

Oracle

Report Time

Timesheet Summary

Employee

Employee

Description

Time Report

Empl ID

Empl Record

Last Name

Workgroup

Clear Se

Call Details

No. : 164006

User : Baggs, Lori

Site : Yellowknife HRSC

Call Type : HR Systems

Operator : cbadcock

Status : Closed

Employee ID : 869 / 0, 8744 / 0, 8170 / 0

Due Date :

Summary : FW: Donn MacDougall - Peoplesoft Approval group 82AZ1

Problem : Please reassign this approval group as requested until December 12, 2014 or further notice. Donn MacDougall's managers access should also be ceased.

Date : 3/14/2014 10:23:09 AM

Phone : 920-8027

Department : Human Resources

Sub Type : Approval Access

Category : HRIS Priority 1

View By: Week

Date: 20/12/2014

Show Schedule Information

Previous Week

Next Week

Employees For Donald MacDougall, Totals From 15/12/2014 - 21/12/2014

Name	Reported Hours	Hours to be Approved	Exception	Reported Absence	Approved/Submitted Hours	Denied Hours	Annual, Sick and Special	Employee ID	Empl Record
	7.5000	0.0000			7.5000	0.0000	0.0000	869	0
	67.5000	0				0.0000	0.0000	8229	0
	7.5000	0				0.0000	0.0000	8744	0
	0.0000	0				0.0000	0.0000	8987	0
	7.5000	0				0.0000	0.0000	8112	0
	0.0000	0				0.0000	0.0000	8135	0
	0.0000	0				0.0000	0.0000	8226	0
	0.0000	0				0.0000	0.0000	8170	0
	37.5000	0				0.0000	0.0000	8317	0
	7.5000	0				0.0000	0.0000	8170	0
	9.0000	0				0.0000	0.0000	8179	0

Manager Self Service

Time Management

Approve Reported Time



December 24, 2014

RE: PeopleSoft Delegation



Donn <donn@theedge.ca>

To: 'Gary MacDougall'

Cc: 'Brad Patzer'



Reply

Reply All

Forward



Wed 12/24/2014 11:09 PM

Ok, I guess the emails I got telling me that this was a delegation that I requested was just one more "systems" issue.

... but wait ... if PeopleSoft thinks I'm an active employee, then I should not only screen into jobs that I'm qualified for, but actually have appeal rights as well!

Or I guess you could manipulate things so that status updates don't appear for me on the jobs on which I've applied, you know, just to mess with my appeal rights.

From: Gary MacDougall [mailto:Gary\_MacDougall@gov.nt.ca]

Sent: December-22-14 4:25 PM

To: Donn

Cc: Brad Patzer

Subject: Re: PeopleSoft Delegation

Donn,

You are not an employee but you are being paid which means Peoplesoft is used, which in turn means you have to still be attached to a position number. That position number has manager powers attached to it that have to be manually overridden and extended, if necessary, which is what HR did when the initial manager delegation expired on December 12.

Gary

Sent from my iPad

On Dec 19, 2014, at 5:00 PM, Donn <donn@theedge.ca> wrote:

Note also ... I'm not an employee; this latest gaffe with PeopleSoft is not covered by any kind of confidentiality.

Please send me your thoughts before Tuesday at noon.

From: Donn [mailto:donn@theedge.ca]

Sent: December-18-14 10:38 AM

To: Brad Patzer@gov.nt.ca; gary\_macdougall@gov.nt.ca


Subject: PeopleSoft Delegation

Importance: High

I am no longer an employee. I do not have power to delegate.

If the GNWT is gaining some advantage from continuing to leave my manager powers intact, but delegated, then offer me compensation. Otherwise, do not delegate abilities in my name.

Donn



Government of  
Northwest Territories

Gouvernement des  
Territoires du Nord-Ouest

Ms. Elaine Keenan-Bengts  
Information and Privacy Commissioner  
5018 - 47th STREET  
PO BOX 382  
YELLOWKNIFE NT X1A 2N2

DEC 08 2017

Dear Ms. Keenan Bengts:

**Request for Privacy Review: Your File 17-225-4**

Your privacy review notice in relation to this file was received by the Department of Justice on November 6, 2017. The privacy review relates to concerns brought forward by Mr. Donald MacDougall that occurred during the time period of March 2014 and December 2014.

I have responded to the questions you raised as follows:

1. I would at this time ask that you provide me with the Department's comments and an explanation as how the breaches were allowed to occur and to continue, notwithstanding Mr. MacDougall's attempts to have his supervisor deal with the situation. There is some suggestion in the document provided that for some reason the Department was unable to block Mr. MacDougall's access to the personal information of other employees because he was still on the payroll and, while employed, had managerial responsibilities over a number of individuals.

**The Department of Justice was unaware that the issue continued until December.**

*The Department was aware of the initial issues that lead to Mr. MacDougall receiving notices through the PeopleSoft automated notification system of former employees' leave and step increments. The Director of the Legal Registries Division followed up with designated Client Services Manager with the then Department of Human Resources (now the Department of Finance), and believed that the necessary steps had been taken to address the issue. The Department of Justice was unaware that the issue continued until December.*

.../2

P.O. Box 1320, Yellowknife NT X1A 2L9

C. P. 1320, Yellowknife NT X1A 2L9



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[www.amazon.ca/dp/B0BLB9W1DN](http://www.amazon.ca/dp/B0BLB9W1DN)

## **REPUDIATION III**



Open Issues

D

Donn <donn.macdougall@gmail.com>

To Brad\_Patzer@gov.nt.ca

👍

↩ Reply

↩ Reply All

➡ Forward

⋮

Mon 1/26/2015 9:00 PM

Brad,

I believe we have a number of open issues, but for right now, I think I'm primarily concerned with only two:

1. **My relocation expenses:** The agreement we executed made specific mention of the continuation of "all benefits" AND by letter dated March 12, 2014 I was INFORMED, not OFFERED, that I am entitled to the maximum amount of removal costs—non-taxable. I acted in reliance of this statement and used Matco instead of Uhaul for my move. As such, I am demanding payment of the maximum amount of removal costs—non-taxable in the amount of \$6,329.00.
2. **"Systems" Issue/Legal Privilege:** You had previously provided information to my lawyer that the reason that my profile in PeopleSoft did not show the correct status of positions on I had applied was because of a "Systems" issue. Seeking answers to this issue myself, I recently made an access to information request including a request for information regarding why my PeopleSoft status was not being updated. The reply I got was that the answer was protected by legal privilege. Can you provide me with a reasonable explanation of how the "systems" issue is now an issue protected by legal privilege?

I would like the promised amount of \$6,329.00 for my relocation benefits paid to me before March 1, 2015. On that date, an explanation of how a "systems" issue is now protected by legal privilege would be much appreciated as well.

I will be meeting with my lawyer in early March to discuss the necessity of further action, if we can clear up these two items, I do not believe I will have any concerns warranting litigation.

Regards,

Donn

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**Paperback available on Amazon:**  
[www.amazon.ca/dp/B0BLB9W1DN](http://www.amazon.ca/dp/B0BLB9W1DN)

## **REPUDIATION IV**



February 25, 2015

Paperback available on Amazon:  
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THE GUIDE - HOW TO COMPLETE THE RECORD OF EMPLOYMENT,  
 PROVIDES DETAILED INSTRUCTIONS.

Protected when completed - B

### RECORD OF EMPLOYMENT (ROE)

**1** SERIAL NO.  
W37715409

**2** SERIAL NO. OF ROE AMENDED OR REPLACED

**4** EMPLOYER'S NAME AND ADDRESS  
 GOVERNMENT OF NORTHWEST TERRIT PERM ACCT  
 DEPARTMENT OF HUMAN RESOURCES  
 PO BOX 1320 2-5003-49TH ST  
 YELLOWKNIFE NT  
 Canada

**7** POSTAL CODE  
X1A2L9

**9** EMPLOYEE'S NAME AND ADDRESS  
 Donald MacDougall  
 25 Edward Way  
 St Albert, AB  
 T8N6T4

**13** OCCUPATION

**3** EMPLOYER'S PAYROLL REFERENCE NO.  
119813

**5** CRA PAYROLL ACCOUNT NUMBER  
107-9691RP0004

**6** PAY PERIOD TYPE  
B - Bi-weekly

**8** SOCIAL INSURANCE NO.  
[Colorful icons]

**10** FIRST DAY WORKED  
D M Y  
25 02 2012

**11** LAST DAY FOR WHICH PAID  
D M Y  
13 02 2015

**12** FINAL PAY PERIOD ENDING DATE  
D M Y  
20 02 2015

**14** EXPECTED DATE OF RECALL  
D M Y  
☒ UNKNOWN ☐ NOT RETURNING

**15A** TOTAL INSURABLE HOURS  
ACCORDING TO CHART ON PAGE 2  
1994

**15B** TOTAL INSURABLE EARNINGS  
ACCORDING TO CHART ON PAGE 2  
\$ 5,509.74

**15C** THE FIRST ENTRY MUST RECORD THE INSURABLE EARNINGS FOR THE  
FINAL (MOST RECENT) INSURED PAY PERIOD. ENTER DETAILS BY PAY  
PERIOD AS PER THE CHART ON PAGE 2.

P.P.	INSURABLE EARNINGS	P.P.	INSURABLE EARNINGS	P.P.	INSURABLE EARNINGS
1	\$ 611.48	2	\$ 222.94	3	\$ 222.94
4	\$ 222.95	5	\$ 222.94	6	\$ 222.94
7	\$ 222.94	8	\$ 222.95	9	\$ 222.94
10	\$ 222.95	11	\$ 222.94	12	\$ 222.94
13	\$ 222.95	14	\$ 222.94	15	\$ 222.95
16	\$ 222.94	17	\$ 222.95	18	\$ 222.95
19	\$ 222.94	20	\$ 222.95	21	\$ 222.94
22	\$ 222.95	23	\$ 714.27	24	\$ 896.57
25	\$ 351.31	26	\$ 099.19	27	\$ 099.19
28		29		30	
31		32		33	
34		35		36	
37		38		39	
40		41		42	
43		44		45	
46		47		48	
49		50		51	
52		53			

**16** REASON FOR ISSUING THIS ROE  
 Shortage of work / End of contract or season **A**

FOR FURTHER INFORMATION, CONTACT  
**HR Helpdesk**  
 TELEPHONE NO (866) 475-8162

**17** ONLY COMPLETE IF PAYMENT OR BENEFITS (OTHER THAN REGULAR PAY) PAID IN OR  
 IN ANTICIPATION OF THE FINAL PAY PERIOD OR PAYABLE AT A LATER DATE.

A - VACATION PAY  
 \$  
 START DATE (D/M/Y): END DATE (D/M/Y):

B - STATUTORY HOLIDAY PAY FOR  

D	M	Y	\$	D	M	Y	\$
			\$				\$
			\$				\$
			\$				\$
			\$				\$
			\$				\$

C - OTHER MONIES (SPECIFY)  
 \$  
 START DATE (D/M/Y): END DATE (D/M/Y):

\$  
 START DATE (D/M/Y): END DATE (D/M/Y):

\$  
 START DATE (D/M/Y): END DATE (D/M/Y):

**19** PAID SICK/MATERNITY/PARENTAL/COMPASSIONATE CARE/PARENTS OF CRITICALLY ILL  
 CHILDREN LEAVE OR GROUP WAGE LOSS INDEMNITY PAYMENT

	START DATE	END DATE	AMOUNT	PER DAY	PER WEEK
	D M Y	D M Y			
PSL			\$	<input type="checkbox"/>	<input type="checkbox"/>
WLI - Not ins.			\$	<input type="checkbox"/>	<input type="checkbox"/>
WLI - Ins.			\$	<input type="checkbox"/>	<input type="checkbox"/>
MAT/PA/RC/PCIC			\$	<input type="checkbox"/>	<input type="checkbox"/>

**20** COMMUNICATION PREFERRED IN  
☒ English ☐ French

**21** TELEPHONE NO.  
 (867) 873-7145

**22** I AM AWARE THAT IT IS AN OFFENSE TO MAKE FALSE ENTRIES AND HEREBY CERTIFY  
 THAT ALL STATEMENTS ON THIS FORM ARE TRUE.

Name of Issuer  
**Valerie Stuparyk**

D M Y  
25 02 2015

INS 5220 (11-14) E  
 Version 11.0.2

Service Canada delivers Employment and Social Development Canada programs and services for the Government of Canada.  
 Service Canada has already received a copy of this electronic Record of Employment. Do not submit a paper copy of this Record of Employment to Service Canada.

Page 2 contains important information.

Ce formulaire est également disponible en français



2018-027-NM031

**From:** [REDACTED]  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** GNWT Record of Employment - Replacement ROE  
**Date:** Thursday, June 18, 2015 11:12:14 AM

Hi [REDACTED] - Section 14(1)(b)(i)  
 [REDACTED] I think it would be good if we could be precise as to our intended course of action in [REDACTED] email to Mr. MacDougall. Thx

**From:** [REDACTED]  
**Sent:** Thursday, June 18, 2015 10:16 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: GNWT Record of Employment

Hi,  
 Section 14 (1)(b)(i)  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 Adding such commentary will inevitably keep this going.

**From:** [REDACTED]  
**Sent:** Thursday, June 18, 2015 10:02 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: GNWT Record of Employment

Hi all - Section 14 (1)(b)(i)  
 note [REDACTED] previous suggestion:  
 [REDACTED]  
 Section 14(1)(b)(i)  
 [REDACTED]  
 [REDACTED]

Thx

**From:** [REDACTED]  
**Sent:** Thursday, June 18, 2015 9:51 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: GNWT Record of Employment

2018-027-NM031

I would propose advising him as follows then:

Mr. MacDougall, thank you for your recent e-mails in which you raise concerns regarding your ROE.  
 I have been advised by Human Resources that a new ROE is being issued today to reflect resignation.

[REDACTED]  
 Deputy Minister, Department of Justice,  
 Government of the Northwest Territories.  
 phone: 867-920-6197  
 fax: 867-873-0307  
 e-mail: [REDACTED]

This electronic message and any files transmitted with it are confidential and intended only for the named recipient(s). If you are not the intended recipient please be advised that any disclosure, copying, distribution or use of the contents of this message is strictly prohibited. If you receive this message in error or are not the named recipient, please notify the sender immediately by return e-mail, delete and destroy all copies of this message. E-Mail communications are susceptible to interception by unauthorized parties. If you do not wish the sender to communicate by e-mail please inform the sender immediately.

**From:** [REDACTED]  
**Sent:** Thursday, June 18, 2015 9:36 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: GNWT Record of Employment

Finance has confirmed that the reason for the ending of his employment is an error. They are not certain how this occurred as his resignation is noted in the system as the reason for termination. They are issuing a new ROE this morning to reflect a resignation.

**From:** [REDACTED]  
**Sent:** Thursday, June 18, 2015 8:01 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** FW: GNWT Record of Employment

[REDACTED], after receiving the below I sent an interim response advising that we expect a determination to be made on his ROE shortly - do you have a sense of time frame on this.

[REDACTED]  
 Deputy Minister, Department of Justice,  
 Government of the Northwest Territories.  
 phone: 867-920-6197  
 fax: 867-873-0307  
 [REDACTED]

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2018-027-NM003

1 of 3

From: [REDACTED]  
To: [REDACTED]  
Subject: D. MacDougall Amended ROE  
Date: Friday, June 19, 2015 10:17:35 AM  
Attachments: roef11.pdf

Here is the amended ROE if you require for your records.

I will send this out to him in the mail today.

\$21(1)

Employee Services

Department of Finance

Government of the Northwest Territories

1-867-873-7032 | 7 1-867-873-0282 |

HR Help Desk Toll Free: 1-866-675-8162 or hrhelpdesk@gov.nt.ca

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Service Canada

THE GUIDE - HOW TO COMPLETE THE RECORD OF EMPLOYMENT, PROVIDES DETAILED INSTRUCTIONS.

2018-027-NM003

Protected when completed - B  
2 of 3

**RECORD OF EMPLOYMENT (ROE)**

1 SERIAL NO. **W39365974** 2 SERIAL NO. OF ROE AMENDED OR REPLACED **W37715409** 3 EMPLOYER'S PAYROLL REFERENCE NO. **119813**

4 EMPLOYER'S NAME AND ADDRESS  
**GOVERNMENT OF NORTHWEST TERRIT PERM ACCT  
DEPARTMENT OF HUMAN RESOURCES  
PO BOX 1320 2-5003-49TH ST  
YELLOWKNIFE NT  
Canada** 5 CRA PAYROLL ACCOUNT NUMBER **10740691RP0004** 6 PAY PERIOD TYPE **B - Bi-weekly**

7 POSTAL CODE **X1A2L9** 8 SOCIAL INSURANCE NO. **[REDACTED]**

9 EMPLOYEE'S NAME AND ADDRESS  
**Donald MacDougall  
25 Edward Way  
St Albert, AB** 10 FIRST DAY WORKED **25 02 2012** 11 LAST DAY FOR WHICH PAID **13 02 2015** 12 FINAL PAY PERIOD ENDING DATE **20 02 2015**

13 OCCUPATION **T8N6T4** 14 EXPECTED DATE OF RECALL **[REDACTED]** ☐ UNKNOWN ☒ NOT RETURNING

15A TOTAL INSURABLE HOURS ACCORDING TO CHART ON PAGE 2 **1994** 16 REASON FOR ISSUING THIS ROE **Quit** ☒ E

15B TOTAL INSURABLE EARNINGS ACCORDING TO CHART ON PAGE 2 **\$ 5,509.74** FOR FURTHER INFORMATION, CONTACT **HR Helpdesk** TELEPHONE NO. **(866) 475-8162**

15C THE FIRST ENTRY MUST RECORD THE INSURABLE EARNINGS FOR THE FINAL (MOST RECENT) INSURED PAY PERIOD. ENTER DETAILS BY PAY PERIOD AS PER THE CHART ON PAGE 2.

P.P.	INSURABLE EARNINGS	P.P.	INSURABLE EARNINGS	P.P.	INSURABLE EARNINGS
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19	\$222.94	20	\$222.95	21	\$222.94
22	\$222.95	23	\$714.27	24	\$896.57
25	\$351.31	26	\$099.19	27	\$099.19
28		29		30	
31		32		33	
34		35		36	
37		38		39	
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46		47		48	
49		50		51	
52		53			

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B - STATUTORY HOLIDAY PAY FOR **\$** START DATE (D/M/Y): END DATE (D/M/Y):

C - OTHER MONIES (SPECIFY) **\$** START DATE (D/M/Y): END DATE (D/M/Y):

19 PAID SICK/MATERNITY/PARENTAL/COMPASSIONATE CARE/PARENTS OF CRITICALLY ILL CHILDREN LEAVE OR GROUP WAGE LOSS INDEMNITY PAYMENT

	START DATE	END DATE	AMOUNT	PER DAY	PER WEEK
	D M Y	D M Y			
PSL			\$		
WLI - Not Ins.			\$		
WLI - Ins.			\$		
MAT/PAR/CC/PCIC			\$		

20 COMMUNICATION PREFERRED IN ☒ English ☐ French 21 TELEPHONE NO. **(867) 873-7032**

22 I AM AWARE THAT IT IS AN OFFENSE TO MAKE FALSE ENTRIES AND HEREBY CERTIFY THAT ALL STATEMENTS ON THIS FORM ARE TRUE.

Name of Issuer **Christine Hoiland** D M Y **19 06 2015**



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## **REPUDIATION V**



**Paperback available on Amazon:**  
[www.amazon.ca/dp/B0BLB9W1DN](http://www.amazon.ca/dp/B0BLB9W1DN)

**May 8, 2015**

The Performance Document has been cancelled.



PS\_HR\_ADMIN@gov.nt.ca  
To donn.macdougall@gmail.com



Fri 5/8/2015 8:16 AM

The Performance Document has been cancelled

Internal

[http://ps.hr.gov.nt.ca/psp/hcmprod/EMPLOYEE/HRMS/c/ROLE\\_EMPLOYEE.EP\\_CURRENT\\_MY\\_PRF.GBL](http://ps.hr.gov.nt.ca/psp/hcmprod/EMPLOYEE/HRMS/c/ROLE_EMPLOYEE.EP_CURRENT_MY_PRF.GBL)

External

[https://ps.hr.gov.nt.ca/psp/hcmprod/EMPLOYEE/HRMS/c/ROLE\\_EMPLOYEE.EP\\_CURRENT\\_MY\\_PRF.GBL](https://ps.hr.gov.nt.ca/psp/hcmprod/EMPLOYEE/HRMS/c/ROLE_EMPLOYEE.EP_CURRENT_MY_PRF.GBL)

(Please do not respond to this automatic notification.)



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## REPUDIATION VI



**Paperback available on Amazon:**  
[www.amazon.ca/dp/B0BLB9W1DN](http://www.amazon.ca/dp/B0BLB9W1DN)

**March 10, 2016**


Violation of Terms by GNWT

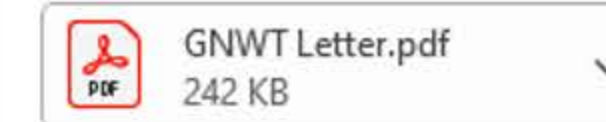


Donn MacDougall  
To Brad Patzer



Thu 3/10/2016 5:05 PM

 This message was sent with High importance.



Brad,

Please find attached a letter from the GNWT asserting that I was overpaid in 2013, and further informing me that the GNWT has started reclaiming these funds—the letter informs me that the amount of \$124.40 has been reclaimed so far.

You will note that our settlement agreement includes (at paragraph 9) the statement **“The GNWT and Mr. MacDougall acknowledge that this is a voluntary agreement and the parties are bound by its terms as full and final settlement of all employment related matters.”** As such, The GNWT cannot reclaim amounts alleged to have been overpaid in 2013 (which predates our agreement) and the GNWT is in violation of our settlement agreement.

Now that I’ve brought this matter to your attention, could you please look into this and advise me what steps, if any, the GNWT will be taking to rectify this situation?

Regards,

Donn





March 1, 2016

Mr. Donald MacDougall  
26 EDWARD WAY  
ST. ALBERT, AB T8N 6T4

Dear Mr. MacDougall:

**Repayment of Salary**

This letter is to advise you that you were overpaid salary.

The overpayment occurred in the calendar year 2013 and the total gross amount was \$ 722.37.

The amount that has been paid back to date is \$ 124.40. For the calendar year 2015 the amount paid back is \$ 124.40.

Please include this amount \$ 124.40 on line 229 (Other Employment Expenses) when you file your Tax Return and ensure a copy of this letter is attached with your return.

You will receive a letter from us each year until the amount is paid in full.

If you have any questions, please feel free to contact Human Resources Help Desk by phone at 1-866-475-8162 or by e-mail at [hrhelpdesk@gov.nt.ca](mailto:hrhelpdesk@gov.nt.ca).

Sincerely,

Kristine Woolgar-Barrett  
Payroll Officer  
Employee Services, Payroll

c Payroll File



## REPUDIATION VII



Paperback available on Amazon:  
[www.amazon.ca/dp/B0BLB9W1DN](http://www.amazon.ca/dp/B0BLB9W1DN)

November 14, 2016

Pension Errors

Donn <donn.macdougall@gmail.com>  
To Brad\_Patzer@gov.nt.ca  
Cc Sylvia\_Haener@gov.nt.ca; Martin\_Goldney@gov.nt.ca  
Mon 11/14/2016 7:45 PM

Pension Estimate.jpeg.docx  
1 MB

Brad,

the Government of Canada Pension Centre seems to think my last day with the GNWT was December 14, 2012 (see attached).


You may recall that I "quit" effective February 13, 2015.

If it's not too much trouble, would you mind correcting the termination date that is on record with the Government of Canada Pension Centre. And, by golly, it would be great if you could let me know when you have done so.

Thanks!

Donn

PS—I'm not saying litigation is not still a very real possibility on this file, but it would be great if my pension dates actually reflect the period of time that I actually contributed to my pension!



Public Works and  
Government Services  
Canada

Travaux publics et  
Services gouvernementaux  
Canada

Pension Benefit Estimates Statement

00:26:00  
Macdougall, Donald

PART 1 - CALCULATION PARAMETERS

Date of Birth: \*

1969-05-25

Most Recent Date of Joining the Plan:  
Termination Date from the Public Service

2006-02-20

(Day following last day of employment in Public Service)

2012-12-14

Highest Average Salary:  
From and To Dates:

\$4,214.76

2007-12-14 to 2012-12-13

Pensionable Service:  
Purchased Pensionable Service:  
Total Pensionable Service:  
Potential Pensionable Service (Available for buyback):  
Total including potential service not yet purchased:

06 years 297.0 days  
00 years 000.0 days  
06 years 297.0 days  
00 years 000.0 days  
06 years 297.0 days



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## **THE LITIGATION**



Paperback available on Amazon:  
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March 20, 2019



COURT FILE NUMBER: 1903 00779  
COURT Court of Queen's Bench of Alberta  
JUDICIAL CENTRE: Edmonton  
APPLICANT: THE GOVERNMENT OF THE NORTHWEST TERRITORIES  
RESPONDENT PARTY TO THIS ORDER: DONALD MACDOUGALL also known as  
DONN MACDOUGALL  
DOCUMENT: ORDER  
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PERSON FILING THIS DOCUMENT: Sharon Roberts  
Field LLP  
Barristers and Solicitors  
2500, 10175 101 Street NW  
Edmonton, AB T2P 1M7  
Ph: (780) 423-9591 Fax: (780) 428-9329  
Email: sroberts@fieldlaw.com  
File No. 38301-12  
I hereby certify this to be a true copy of the original.  
for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: MARCH 20, 2019  
NAME OF JUSTICE WHO MADE THIS ORDER: JUSTICE GILL  
LOCATION OF WHERE ORDER WAS PRONOUNCED: Edmonton

UPON the Originating Application of the Applicant, The Government of the Northwest Territories (the "GNWT"), filed January 9, 2019 (the "Originating Application"), set down to be heard in Justice Special Chambers on April 4, 2019; AND UPON being advised by counsel for the GNWT that the parties to the Originating Application have reached a resolution of the matters in issue pursuant to which they have consented to endorsing this form of consent Order and to executing a confidential written agreement further particularizing the terms of that resolution (the "Confidentiality Agreement"); AND UPON noting the endorsement of consent hereon of the GNWT and the Respondent, Donald MacDougall also known as Donn MacDougall ("Mr. MacDougall");

IT IS HEREBY ORDERED THAT:

1. Mr. MacDougall shall forthwith, and in any event by the close of business on Tuesday, March 19, 2019, voluntarily destroy any and all copies of records in Mr. MacDougall's possession and/or control, in any form whatsoever, that contain any personally identifying information of third parties that he acquired from the GNWT following the termination of his employment with the GNWT in March 2014 due to irregularities in People Soft (the "Private Information"), and further shall surrender the copy of the



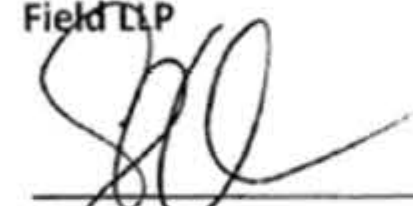
sealed, unfiled Affidavit of Denise Anderson sworn January 9, 2019 that Mr. MacDougall received from counsel for the GNWT on January 15, 2019 during the GWNT's application for the Sealing Order granted by the Honourable Justice G.S. Dunlop on January 15, 2019 (the "Sealing Order").

2. Field LLP shall ensure the return to the GNWT, safekeeping or destruction (the selection of which shall be in the sole discretion of the GWNT) of the Confidential Information surrendered by Mr. MacDougall pursuant to paragraph 1 of this Order.
3. The Sealing Order shall be extended and remain in effect indefinitely or until further Order of this Honourable Court and the sealed Affidavit of Denise Anderson sworn January 9, 2019 shall remain sealed as part of the Court record accordingly.
4. Mr. MacDougall shall forthwith, and in any event by the close of business on Tuesday, March 19, 2019, execute and provide to Field LLP the Confidentiality Agreement, which shall include a form of declaration agreed upon by the parties confirming that the steps directed in paragraph 1 of this Order have been completed and that no copies of the Private Information, in whole or in part, have been retained, disseminated or otherwise disclosed to any other party by Mr. MacDougall, and which declaration have the same effect as evidence sworn under oath before this Honourable Court.
5. The Originating Application, scheduled to be heard in Justice Special Chambers on April 4, 2019 at 2:00 p.m., is adjourned *sine die*.
6. There shall be no costs payable by or to any party pursuant to any and all steps taken in these proceedings to date.

  
 JUSTICE OF THE COURT OF QUEEN'S BENCH OF ALBERTA

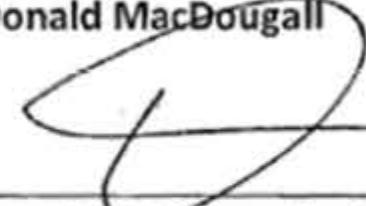
CONSENTED TO BY:

Field LLP



Sharon Roberts  
 Counsel for the Government of the  
 Northwest Territories

Donald MacDougall



Donald MacDougall, also known as Donn  
 MacDougall

## THE ADJOURNMENT



**Paperback available on Amazon:**  
[www.amazon.ca/dp/B0BLB9W1DN](http://www.amazon.ca/dp/B0BLB9W1DN)



2500 – 10175 101 ST NW  
Edmonton AB T5J 0H3  
fieldlaw.com

CALGARY / EDMONTON / YELLOWKNIFE

**Sharon Roberts**  
Partner  
AB  
T 780-423-9591  
sroberts@fieldlaw.com  
Assistant: Lynette Senio  
T 780-643-8797  
lsenio@fieldlaw.com  
Our File: 38301-12

March 20, 2019

**VIA EMAIL**  
[SPECIALCHAMBERSCOORDINATOR.QBEDMONTON@ALBERTACOURTS.CA](mailto:SPECIALCHAMBERSCOORDINATOR.QBEDMONTON@ALBERTACOURTS.CA)

Court of Queen's Bench  
Special Chambers  
1A Sir Winston Churchill Square  
Edmonton, AB

**Re: The Government of the Northwest Territories v. Donald MacDougall; Action No.: 1903 00779**

Please find enclosed with this letter the filed Order of Justice Gill in this matter. Pursuant to the attached Order, our Originating Application scheduled to be heard in Justice Special Chambers on April 4, 2019 can be released and is adjourned *sine die*.

Sincerely,  
FIELD LLP  
  
Sharon Roberts  
Partner  
SAR/ls  
Enclosure

Cc: Donn MacDougall, via email

11065959-1

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## **THE CONCLUSION???**



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## RE: Special Chambers Date - October 10, 2019



Sharon Roberts <[sroberts@fieldlaw.com](mailto:sroberts@fieldlaw.com)>

To: 'Donn MacDougall'

Cc: Adam Ollenberger



7/18/2019



Dear Mr. MacDougall,

Thank you for your email. As you may recall, we entered into a resolution involving both an Order and a Confidentiality Agreement, copies of each of which are attached for ease of reference. **These documents concluded the matter** and we are not waiting for any final hearing.

Sincerely,



**Sharon A. Roberts** | Partner

T 780-423-9591 | F 780-428-9329 | [sroberts@fieldlaw.com](mailto:sroberts@fieldlaw.com)

2500 - 10175 101 ST NW, Edmonton AB T5J 0H3

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**From:** Donn MacDougall [<mailto:donn.macdougall@gmail.com>]

**Sent:** Tuesday, July 16, 2019 12:49 PM

**To:** Sharon Roberts; Adam Ollenberger

**Subject:** Special Chambers Date - October 10, 2019

Hello again,

RE: GNWT v. MacDougall

I see that October 10, 2019 has opened up for special chambers, and if you're available, I would like you to secure the date for the hearing of final relief in this matter.

If that date is not acceptable to you, any other date in 2020 would be fine.

Regards,

Donn



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## **THE REFUSAL**



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## 2019 NTIPC 26

### NORTHWEST TERRITORIES INFORMATION AND PRIVACY COMMISSIONER Review Report 19-209

File: 18-153-4  
December 4, 2019  
Citation: 2019 NTIPC 26

#### Background

On January 11, 2018, the Applicant sent a request for information to the Government of the Northwest Territories (GNWT) Department of Finance. As the contents of the request are not at issue in this review, I will not detail them here. On February 6, 2018, the access to information and protection of privacy (ATIPP) Co-ordinator for the Department of Finance wrote to the Applicant and explained that, due to the large volume of records at issue (approximately 375 pages), they were relying on section 11(b) of the *Access to Information and Protection of Privacy Act* (ATIPPA) to extend the time for responding to the request for information. The new date set for response was March 11, 2018. The Department of Finance also indicated that pursuant to section 50(2) of ATIPPA, they were requiring the Applicant to pay the \$0.25 per page fee for the requested documents. The ATIPP Co-ordinator stated that once they received the cheque for 50% of the fees, the Department would proceed with processing the request.

The Applicant mailed the cheque for the fee payment on February 9, 2018. It is unclear exactly when the cheque arrived at the Department of Finance. On March 6, 2018, the Applicant emailed the ATIPP Co-ordinator and asked whether the cheque had been received. The ATIPP Co-ordinator replied the same day indicating that the cheque had been received. The cheque was cashed on March 7, 2018. On March 19, 2018, having still not received the records he requested, the Applicant again wrote to the ATIPP Co-ordinator and asked for an update on the disclosure request. He received an out of office reply. On April 3, 2018 the Applicant received a call from a different Department of Finance representative, a Manager, who



reportedly said that the request would take an additional "week or two". When he did not receive the records in a week or two, the Applicant wrote to the ATIPP Co-ordinator on May 14, 2018 and again requested an update on his disclosure request. The Applicant states that he also called an ATIPP Co-ordinator on May 18, 2018 and left a voice message requesting a reply to his email. He called the Manager on May 31, 2018 and left a voice mail requesting an update on his disclosure request. He did not receive a reply from either representative. On May 31, 2018, he wrote an email to the Manager requesting an update on his request for information. He received an out of office reply. On June 28, 2018, having still not received either a reply from the Department of Finance, nor the response to the information he requested, the Applicant wrote to the Information and Privacy Commissioner (IPC) and requested a review.

The Department of Finance ultimately mailed the Applicant the disclosure package on July 19, 2018. This review will not deal with the contents of the disclosure package. Rather, this review will address the Department of Finance's delay in responding to the Applicant's information request.

### Relevant Sections of the Legislation

The Act sets out the process for responding to an access to information request in sections 7 and 8 as follows:

- 7.(1) The head of a public body shall make every reasonable effort to assist an applicant and to respond to an applicant openly, accurately, completely and without delay.
- 8. (1) The head of a public body shall respond to an applicant not later than 30 days after a request is received unless
  - (a) the time limit is extended under section 11; or

- (b) the request has been transferred under section 12 to another public body.

- (2) The failure of a head to respond to a request in time is deemed to be a decision to refuse access to the record.

Section 11 of the Act sets out circumstances in which a public body can extend the time for responding to an access to information request:

- 11.(1) The head of a public body may extend the time for responding to a request for a reasonable period where
  - (a) the applicant does not give enough detail to enable the public body to identify a requested record;
  - (b) a large number of records is requested or must be searched to identify the requested record and meeting the time limit would unreasonably interfere with the operations of the public body;
  - (c) more time is needed to consult with a third party or another public body before the head can decide whether or not the applicant is entitled under this Act to access to a requested record; or
  - (d) a third party asks for a review under subsection 28(2).
- (2) Where the time for responding to a request is extended under subsection (1), the head of the public body must tell the applicant without delay
  - (a) the reason for the extension;
  - (b) when a response can be expected; and
  - (c) that the applicant may ask for a review of the extension under subsection 28(1).



## Issues

There are two issues raised in this review, which both come down to the same thing, which is whether the public body responded to the Applicant in a timely manner.

1. Did the public body comply with section 8 of ATIPPA?
2. Did the extension of time meet the criteria for extension set out in section 11(1)(b) of ATIPPA?

## Discussion

1. Did the public body comply with section 8 of ATIPPA?

Section 8(1) of ATIPPA requires that public bodies respond to an access to Information request within 30 days. That clearly did not happen here. After receiving the request on January 11, 2018, the public body indicated that they were implementing a 30 day extension to March 11, 2018. However they did not finally provide the Applicant with the responsive records until July 19, 2018. This is an obvious breach of their section 8(1) obligations to reply within 30 days.

This is not a new problem for the Department of Finance. In Review Report 17-162, another file in which the Department had failed to meet legislated time frames, I recommend that if not done already, the Department of Finance create and implement a "bring forward" system and a detailed procedure guideline that should help them in keeping track and on time. It appears that those recommendations, while accepted by the public body, were not implemented. I feel compelled to note that the Act has been in place for over 20 years. Given that, and given that I have already made this recommendation to this department, these kinds of delays should not be happening.

Section 8(2) of ATIPPA states that the failure of a public body to respond to a request in time is a deemed refusal to access the records. When I questioned the Department of Finance on this,

the response from the ATIPP Co-ordinator on July 19, 2018 was "To clarify, the Department has not refused to provide the Applicant with the requested documents. A disclosure package has been prepared, with proposed redactions and is attached to this response for your review." This statement shows a significant lack of understanding of the legislation. If you do not reply within the legislated time frame, it is a deemed to be a refusal to reply. The public body cannot simply say it is not a refusal and have that be true. When they did not reply within the legislated time frame, they were deemed, in law, to have refused access to the records. Thus I find that until they sent out the records on July 19, 2018, the public body inappropriately refused access to the records to the Applicant.

2. Did the extension of time meet the criteria for extension set out in section 11(1)(b) of ATIPPA?

In response to the Applicant's original request for information dated January 11, 2018, the Department of Finance took just under 3 weeks to respond indicating that due to the large volume of records at issue (approximately 375 pages), they were extending the time for response to March 11, 2018, pursuant to section 11(1)(b) of ATIPPA.

As a preliminary comment, I routinely deal with access to information requests involving thousands of records. Three hundred and seventy five pages is not, by any definition, a "large volume" of records such as to justify an extension of time. An ATIPP Coordinator should be able to review and redact that number of pages within a few days - certainly within the thirty days allowed for under the Act. The delay was not in any way justified pursuant to section 11(b).

Furthermore, instead of replying to the Applicant within the extended time frame as promised, and as required under the legislation, they simply ceased to communicate with the Applicant in any way. They ignored the Applicant's repeated requests for updates and did not ultimately send the records until July 19, 2018 after the Applicant had made a request for




review to my office. This was over four months after their own extended deadline and over six months after the Applicant first submitted his request.

When this issue came to my attention, I asked the public body for their submissions on why the Department of Finance was so egregiously delayed in responding to the Applicant. Their response was as follows:

I understand that this response is late and accept that we should have updated the applicant of these delays in a timelier manner. However, it was important for the Department to ensure the disclosure package received the appropriate redactions and legal review. In addition to the extra time needed to assemble the documentary packages under these circumstances, the Department also expended additional unforeseen time dealing with **the applicant's decision to contact past and current GNWT employees in connection with this matter. The GNWT considers the applicant's actions highly inappropriate and is considering its legal options.**

When I received this response from the public body, I was confused by it in that it did not address in any specific way, with any reference to relevant sections of the Act, the reasons for the delay, or how those delays fell within either section 11 or 12 of ATIPPA. So I wrote back to the public body and asked for further explanation. This was the response I received:

I recognize that the Department was extremely late in providing this disclosure package to the Applicant. This delay was largely required to accommodate additional reviews of all documents by the Department of Finance and Justice related to s. 15(1)(a) of ATIPPA. In addition and although not a material cause of delay, the Department had a number of key personnel on vacation at various times throughout the summer which added to the time required to complete this request.



Government of  
Northwest Territories

Gouvernement des  
Territoires du Nord-Ouest

JUL 19 2018

Ms. Elaine Keenan-Bengts  
Information and Privacy Commissioner  
PO BOX 382  
YELLOWKNIFE NT X1A 2N3

Dear Ms. Keenan-Bengts:

**Request for Review – Deemed Refusal - Your File No. 18-153-4**

Thank you for your letter dated July 5, 2018 regarding the request for review from Mr. Donn MacDougall. The request received relates to a Request for Information that Mr. MacDougall submitted to the Department of Finance (the 'Department') on January 11, 2018.


To clarify, the Department has not refused to provide Mr. MacDougall with the requested documents. A disclosure package has been prepared, with proposed redactions and is attached to this response for your review.

I understand that this response is late and accept that we should have updated the applicant of these delays in a timelier manner. However, it was important for the Department to ensure the disclosure package received the appropriate redactions and legal reviews. In addition to the extra time needed to assemble the documentary package under these circumstances, the Department also expended additional unforeseen time dealing with **Mr. MacDougall's decision to contact past and current GNWT employees in connection with this matter. The GNWT considers Mr. MacDougall's actions highly inappropriate and is considering its legal options.**

Along with the disclosure package, I have also attached a copy of the original Request for Information submitted by the Applicant. Further, I can confirm that the Department has forwarded the disclosure package, with redactions applied, to Mr. MacDougall in response to his original request.

If you require further clarification or have any questions on this matter please contact me at [Terence.Courtoreille@gov.nt.ca](mailto:Terence.Courtoreille@gov.nt.ca).

Sincerely,



Terence Courtoreille  
Director, Shared Corporate Services  
Department of Finance

P.O. Box 1320, Yellowknife NT X1A 2L9

[www.gov.nt.ca](http://www.gov.nt.ca)

C. P. 1320, Yellowknife NT X1A 2L9



The Department had a number of telephone conversations with the applicant indicating there would be delay, however the Department failed to formally notify the applicant as required under s. 11 or s. 12. I apologize for this oversight, but stress the nature of this request was unique.

I should first note here that the Applicant has contradicted the public body's claims that there were "a number of telephone conversations with the applicant indicating there would be delay". The Applicant says there was only one phone call about this. As the public body received the Applicant's submissions and did not contest this allegation, I accept that there was in fact only one phone call and that the public body's claims otherwise are exaggerated.

Despite being twice given the opportunity to provide submissions, I find that the Department of Finance did not provide this office or the Applicant with a single valid reason for their approximately four month delay in providing a response to the Applicant. In order for the public body to be able to rely on section 11(1)(b), it has to establish not only that a large number of records was requested or had to be searched to identify responsive records, but also that responding within the initial 30 days would unreasonably interfere with the operations of the public body. As noted above, although 375 pages to review is not insignificant, it is not of a magnitude sufficient to meet the threshold set out in section 11(1)(b).

More importantly though, the public body did not establish that responding within the initial 30 days would unreasonably interfere with the operations of the public body. One of the factors for the delay cited by the Department of Finance was key personnel were on vacation at various times throughout the summer which added to the time required to complete this request. While I can accept that this could have made the ATIPP CO-ordinator's job more difficult, I cannot accept that this could have warranted a four month delay. Even if these "key personnel" were on vacation for overlapping or consecutive periods, again, I very much doubt that these circumstances were ongoing for four full months. This points, in part, to a problem

that I have commented on before (see Review Report 18-191) which is the way that public bodies deal with the absence of an employee. This is a department, in their role as the Government's human resources manager, that receives many access to information requests. The reality is that there should have been someone within the absent employee's working group that could take over carriage of this file in their absence. As I stated in Review Report 18-191, this seems to me to be something that would go without saying. Given the clear time frames set out in the *Access to Information and Protection of Privacy Act* I find it hard to believe that no arrangements had been made for someone to monitor and do the work of the employee on leave. Presumably someone had to be assigned to do the work while the ATIPP Coordinator was away.

Furthermore, public bodies are expected to comply with their own legislation. There are many employees who work within the Department of Finance. Assuming that the ATIPP Coordinator was unable to review the 375 pages of records in a timely manner, I cannot imagine that taking one or even a couple of employees away from other duties to assist in the review would unreasonably interfere with the operations of the public body. As a sophisticated party, the public body should have anticipated that when persons tasked with handling ATIPPA obligations are on vacation, someone else within the public body will need to step up and take over that role. For that matter, if a request involving a truly large volume of materials (i.e. thousands of pages) comes in the door such that meeting the 30 day response period cannot be met by one employee, there are many other employees in this department who should be trained and able to assist. As I said in Review Report 18-191 lack of adequate staff is simply not one of the reasons for an extension of time contemplated by section 11 of the Act. While having some key personnel away may have caused difficulty in responding, this does not meet the test set out in the Act. The Act requires not that meeting the time line would unreasonably interfere with the work of the ATIPP Coordinator, but that meeting the time line would unreasonably interfere with the operations of the public body. That means the operations of the public body as a whole. The Department of Finance is a large public body within the GNWT system and I cannot believe that diverting one or two employees to assist the ATIPP



Coordinator for a day or two or even a week would create so much disruption as to amount to an unreasonable interference with the operations of the public body. While it may be inconvenient, that is not sufficient to meet the criteria of section 11(1)(b).

Another reason provided by the Department of Finance for not meeting their obligations to respond in a timely manner was that "it is important for the Department to ensure the disclosure package received the appropriate redactions and legal reviews". Section 11(c) does contemplate an extension of time when "more time is needed to consult with a third party or another public body before the head can decide whether or not the applicant is entitled under this Act to access to a requested record". However, the public body did not refer to this section at all. Nor did they raise this excuse until well after the fact and only during the review process.

That it is important that the Department ensures that the disclosure package is appropriately redacted is simply stating the obvious. This step must be taken with every request for information. It is hardly something new. Nor is it a reasonable rationale for not providing a reply to the Applicant within the legislated time lines. It absolutely does not establish that to do this within the initial 30 days would unreasonably interfere with the operations of the public body.

Another reason cited by the Department of Finance for the delay was that the Department was dealing with the Applicant contacting past and current GNWT employees with this matter. While I have no doubt that the situation with the Applicant was frustrating, this does not absolve the public body of its duty to comply with its legislated obligations pursuant to ATIPPA.

**The fact that the Applicant was contacting other employees has nothing to do with processing an access to information request.** There should have been enough resources allocated to processing the request for information regardless of what other actions the Applicant was taking in dealing with the public body.

## Conclusion and Recommendations

**The Department of Finance in this case failed to meet their obligations under ATIPPA.** The breaches of section 8 and 11 also amounted to a breach of the public body's section 7 duty to make every reasonable effort to assist an applicant and to respond to an applicant openly, accurately, completely and without delay. I reiterate that ATIPPA has been in place for over 20 years. Moreover, the obligation to respond within 30 days is arguably one of the most basic tenants of the legislation. The fact that the Department of Finance could not achieve this very basic obligation is very troubling, particularly as this appears to be a trend with this department. It demonstrates either a fundamental lack of a basic understanding of the purpose of the legislation or an intentional attempt to ignore or dismiss it. The Department of Finance, and in fact all public bodies, should take note that when the amendments to the *Access to Information and Protection of Privacy Act* contained in Bill 29 come into effect, failing to meet these basic requirements of the legislation will have far more serious implications for the public body and for the GNWT as a whole. I therefore make the following recommendations:

1. I recommend that the ATIPP Co-ordinator and any other persons that will be tasked with responding to ATIPP requests be provided with in depth training on ATIPP including the meaning of a deemed refusal pursuant to section 8(2) of ATIPPA.
2. I recommend that, if not done already, the Department of Finance create and implement a "bring forward" system and a detailed procedure guideline to track requests received and enable them to track response times.
3. I recommend a review of policies and procedures which deal with responding to an access to information requests when "key personnel" are on vacation. If no such policies or procedures exist, I recommend that they be created, and that the policy



include a provision that where an employee is absent for more than a given number of days, another employee must take over their responsibilities with respect to ATIPPA.

4. I recommend that policies and procedures be put into place so that, when needed, other employees may be tasked with assisting the ATIPP Coordinator to meet the deadlines imposed by the Act. Other employees should be identified as those who might be called upon to assist and these other employees should receive appropriate training so that they can jump into action when called upon.
5. I recommend that the Department of Finance advise my office when these recommendations have been implemented so that this can be reported in our next annual report.

Elaine Keenan Bengts  
Information and Privacy Commissioner

## THE MISSING



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P.O. Box 382  
Yellowknife, NT  
X1A 2N3

Department of Finance  
P.O. Box 1320  
Yellowknife, NT  
X1A 2L9

*Down*

October 24, 2018

Attention: Terence Courtoreille  
ATIPP Co-Ordinator

Dear Sir:

Re: Request for Review - Adequacy of the Response  
Donn MacDougall  
Our file: 18-184-4

This will advise that I have received the enclosed request from Donn MacDougall asking that I review the adequacy of the response he received to his Request for Information made on January 11<sup>th</sup> of this year. As noted in my letter to you earlier today, this constitutes the third Request for Review arising out of that Access to Information request. Please ensure that you refer to the appropriate file number when corresponding with this office.

Enclosed is a copy of Mr. MacDougall's letter of complaint. As I read it, his complaint is not about the records he did receive, but about the records he did not receive. He notes that the department took an extension of time to respond to his request because of a "large number of records", and that he was assessed a fee based on there being 375 pages of responsive records but that he received only 94 pages of records in the response actually provided to him. **He seeks an explanation for the 281 missing pages.**

In order to assist me in my review, I would ask that you provide me with the following information:

- a) a copy of all records identified as being responsive to the Applicant's request for information. I anticipate that this will include all 375 records identified in correspondence to the Applicant.



October 25, 2018  
Page 2

If there are not 375 pages of records, I will require a detailed explanation as to why the Applicant how the initial estimate of pages was reached and why that number did not pan out.


- b) a copy of all the records provided to the Applicant showing any deletions or redactions
- c) a full and thorough explanation for the difference in the number of pages initially identified as being responsive and the number of pages in the response to the Applicant.

I require your response in this matter on or before November 26<sup>th</sup>.

Yours truly

Elaine Keenan Bengts  
Information and Privacy Commissioner

/kb  
Encl.  
c.c. Donn MacDougall



Government of Northwest Territories  
Gouvernement des Territoires du Nord-Ouest

Our File: 1029-20-2018-027

Ms. Elaine Keenan-Bengts  
Information and Privacy Commissioner  
PO BOX 382  
YELLOWKNIFE NT X1A 2N3

NOV 01 2018

Dear Ms. Keenan-Bengts:

**Request for Review (Your File 18-184-4)**

Thank you for your letter of October 24, 2018 advising that you have received a request from Mr. Donn MacDougall asking for a review of the adequacy of the response to his Request for Information made on January 11, 2018.

In his complaint letter to you, Mr. MacDougall claims that:

*First, the number of responsive records initially identified was a total of 375 pages[...]*

This is correct. In response to Mr. MacDougall's Request for Information, Mr. Terence Courtoreille sent him a letter on February 6, 2018 both requesting an extension of the time limit and indicating that there were **approximately 375 pages** of records that were responsive to his request. A copy of this letter is attached for your reference.

Further, in his complaint letter, Mr. MacDougall claims that:

*[...] the number of records provided was a total of 94 pages. Information has not been provided as to why the 281 pages were not provided. I would like an explanation for why 281 pages of responsive records were not provided.*

On July 19, 2018, Mr. Terence Courtoreille sent Mr. MacDougall a disclosure package containing 94 pages of records. In the cover letter, Mr. Courtoreille made clear that he had severed 310 pages of records as they contained information exempted from disclosure under Sections 15(c) and 14 (1)(a) and (b) of the *Access to Information and Protection of Privacy Act*. A copy of this letter is attached for your reference.

.../2

P.O. Box 1320, Yellowknife NT X1A 2L9  
www.gov.nt.ca  
C. P. 1320, Yellowknife NT X1A 2L9



Finally, Mr. MacDougall includes a complaint about the fees that were charged to him in the processing of his Request for Information. Mr. MacDougall has been fully refunded any fees he had paid to the Department of Finance with regards to this request. This matter has been detailed further under a separate letter (IPC File: 18-183-4).

If after reviewing this information, you continue to believe that a review of the records is warranted, please notify me and I will prepare a package of records for you.

If you have any questions, please email me at Chervahun\_Emilien@gov.nt.ca or call me at (867) 767-9168 ext. 15020.

Sincerely,



Chervahun Emilien  
Director, Shared Corporate Services,  
Department of Finance

Attachments



OFFICE OF THE  
INFORMATION  
AND PRIVACY  
COMMISSIONER  
NORTHWEST TERRITORIES

P.O. Box 382  
Yellowknife, NT  
X1A 2N3

November 2, 2018

Department of Finance  
P.O. Box 1320  
Yellowknife, NT  
X1A 2L9

Attention: Chervahun Emilien  
ATIPP Co-Ordinator

Dear Madam:

Re: Request for Review - Adequacy of the Response  
Donn MacDougall  
Our file: 18-184-4

Thank you for your letter of November 1<sup>st</sup> with respect to this matter. As I understand the explanation in your letter, there were, in fact, 375 pages of responsive records but 281 pages were withheld in full pursuant to sections 15 (c) and 14(1)(a) and 14(1)(b) of the Access to Information and Protection of Privacy Act.

I would direct your attention to section 5(2) of the Act which provides as follows:

(2) The right of access to a record does not extend to information excepted from disclosure under Division B of this Part, but where that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record.

I note this provision because it is a rare occurrence when an entire record or even an entire page will qualify for an exception from disclosure under Division B. Even were it the case that all of the 281 pages withheld were withheld in accordance with the Act, the practice is to provide those pages with the necessary redactions (even if it is the entire page) with the response, showing what section of the Act is relied on to withhold the page. Furthermore, both sections 14 and 15 are discretionary. When applying a discretionary exception, the public body must first establish that the information in question meets the



November 2, 2018  
Page 2

criteria for the exception and then, as a clear and mandatory second step, exercise its discretion as to whether or not to disclose, providing reasons for that decision and keeping in mind that disclosure is the rule and that access to information should be denied only where there are good, considered reasons to withhold the record.

In the circumstances, therefore, I require:

- a) a copy of all records identified as being responsive to the Applicant's request for information. I anticipate that this will include all 375 records identified in correspondence to the Applicant.
- b) a copy of all the records provided to the Applicant showing any deletions or redactions
- c) a full and thorough explanation with respect to each redacted item, including the considerations that weighed in the exercise of the department's discretion.

All records should be numbered so as to allow me to compare the records disclosed with those withheld.

Your response is required on or before November 26<sup>th</sup>.

Yours truly

Elaine Keenan Bengts  
Information and Privacy Commissioner

/kb  
Encl:  
c.c. Donn MacDougall

**THE "PRIVILEGED"**



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## 2019 NTIPC 25

### NORTHWEST TERRITORIES INFORMATION AND PRIVACY COMMISSIONER Review Report 19-208

File: 18-184-4  
November 6, 2019  
Citation: 2019 NTIPC 25

#### BACKGROUND

On January 11, 2018, the applicant made a request under the Act to the Department of Finance for access to records relating to a matter in which the applicant was involved with that Department. On July 19, 2018, Finance refused to disclose information to the applicant, relying on sections 14(1)(a) and (b), and 15(c), of the *Access to Information and Protection of Privacy Act* (Act) and on October 1<sup>st</sup>, 2018 the Applicant sought a review of the Department's decision in this matter. On October 25, 2018, my Office advised the applicant that a file had been opened to review the refusal to provide access to the requested records.

Of the three provisions cited in the Department's July 19, 2018 letter, the first two, summarized for present purposes, authorize a public body to refuse to disclose information that could reasonably be expected to reveal advice or recommendations, or internal government consultations or deliberations. Section 15(c) authorizes a public body to refuse to disclose "information in correspondence between an agent or lawyer of the Minister of Justice or a public body and any other person in relation to a matter involving the provision of advice or other services by the agent or lawyer."

A November 8, 2018 letter to my Office from the Department's Director, Shared Corporate Services, said this:

As I indicated in my last letter, the Department of Finance severed 310 pages of records as they contained information exempted from disclosure under Sections 15(a) and 14(1)(a) and (b) of the access to information and protection of privacy act (the 'Act'). Please note then in our previous



correspondence, I incorrectly cited s. 15(c) of the *Act*, when I should have cited s. 15(a) as the section under which exemptions from disclosure were made.

The letter also said the following:

In applying this exception to access to the requested information, we considered the content of the information requested. Solicitor-client privilege is confidential communications between a lawyer and the client and the work product on the lawyer's file, and litigation privilege includes communications between a solicitor and third parties. Based on the assessment of the type of information requested and because solicitor-client privilege applies, the Department cannot release the information requested.

The Department of Justice Legal Division will not waive privilege and provide access to this information.<sup>1</sup>

I accept the Department's November 8, 2018 confirmation that it relied on section 15(a)—specifically, solicitor-client privilege—in refusing to disclose records.<sup>2</sup> I also note the May 30, 2019 letter to me from Brad Patzer, Director, Legal Division, of the Department of Justice, stating as follows: "As indicated in all of my previous correspondence, the records in question were not disclosed to the applicant as they [are] subject to solicitor-client privilege, as contemplated by s. 15(c) of the *Act*." I therefore proceed on the basis that Department relies on section 15(a) of the *Act*, which authorizes a public body to withhold "information that is subject to any type of privilege available at law, including solicitor-client privilege". I also proceed on the basis that the Department claims only solicitor-client privilege, not litigation privilege or any other privilege available at law.

<sup>1</sup> As I note below, the law is that only a client may waive privilege, not the lawyer.

<sup>2</sup> Other communications from the government to my Office, including the Department of Justice (Justice), referred to section 15(c), but in doing so also referred to "solicitor-client privilege". As noted above, I proceed on the basis that the references to section 15(c) were also made in error.

## DISCUSSION AND RECOMMENDATIONS

Section 33(1) of the *Act* provides that, on a review of a public body's decision to refuse access, "the onus is on the head of the public body to establish that the applicant has no right of access to the record or part." This burden on the Department to establish that each record is privileged is consistent with the common law burden to establish solicitor-client privilege, which rests on the person asserting the privilege.<sup>3</sup>

Before discussing whether the Department has established the privilege it claims, a brief review of the relevant law on solicitor-client privilege is helpful.

### *Solicitor-client privilege in Canadian law*

#### *General Principles*

I begin by acknowledging that solicitor-client privilege is "a rule of evidence, an important civil and legal right and a principle of fundamental justice in Canadian law,"<sup>4</sup> which must be "as close to absolute as possible to ensure public confidence and retain relevance".<sup>5</sup>

Again, under the *Act*, the onus is on a public body claiming privilege to establish its existence; this is also the case at common law.<sup>6</sup> A public body asserting the privilege must establish that there is a communication between lawyer and client which entails the seeking or giving of legal advice and which is intended to be confidential by the parties. Each of these three elements must be established, by evidence, for a solicitor-client privilege claim to be established in law.<sup>7</sup> The scope of the privilege does not extend to situations "where legal advice is not sought or offered" or the communication "is not intended to be confidential".<sup>8</sup> Moreover, solicitor-client privilege "can only be claimed

<sup>3</sup> *Solosky v. The Queen*, [1980] 1 SCR 821, 1979 CanLII 9 (SCC) [*Solosky*].

<sup>4</sup> *Lavallee, Rackel & Heintz v. Canada (Attorney General)*, [2002] 3 SCR 209, 2002 SCC 61 (CanLII), at paragraph 49.

<sup>5</sup> *Pritchard v. Ontario (Human Rights Commission)*, [2004] 1 S.C.R. 809, 2004 SCC 31 [*Pritchard*], at paragraph 18.

<sup>6</sup> *Solosky*.

<sup>7</sup> *Solosky*, at page 837, per Dickson J., as he then was.

<sup>8</sup> *Pritchard*, at paragraph 16. Also see *Solosky*, at page 835.



document by document, with each document being required to meet the criteria for the privilege.”<sup>9</sup>

It must also be remembered that not everything a lawyer does is privileged. Solicitor-client privilege “does not apply to every communication between a solicitor and his client” and sometimes “confusion arises from a failure to distinguish between the rule of privilege and the principle of confidentiality.”<sup>10</sup> As has been noted, “[s]ome lawyers mistakenly believe that whatever they do, and whatever they are told, is privileged merely by the fact that they are lawyers. This is simply not the case.”<sup>11</sup>

While governments are entitled to the protection of solicitor-client privilege,<sup>12</sup> it is important when assessing government privilege claims to keep in mind that government lawyers are not always acting as legal advisers:

It is, of course, not everything done by a government (or other) lawyer that attracts solicitor-client privilege. While some of what government lawyers do is indistinguishable from the work of private practitioners, they may and frequently do have multiple responsibilities including, for example, participation in various operating committees of their respective departments. Government lawyers who have spent years with a particular client department may be called upon to offer policy advice that has nothing to do with their legal training or expertise but draws on departmental know-how. Advice given by lawyers on matters outside the solicitor-client relationship is not protected. ... Whether or not solicitor-client privilege attaches in any of these situations depends on the nature of the relationship, the subject matter of the advice and the circumstances in which it is sought and rendered.<sup>13</sup>

<sup>9</sup> *Ibid.* Also see *Gardner v. Viridis Energy Inc.*, 2013 BCSC 580 (CanLII), at paragraph 18: “A party asserting legal advice privilege must establish that privilege document by document by showing that each document is a communication between lawyer and client that involves seeking or giving legal advice and is intended to be confidential by the parties” (citing *Solosky*).

<sup>10</sup> *R. v. B.*, 1995 CanLII 2007 (BCSC), per Thackray J., as he then was, at paragraph 22.

<sup>11</sup> *Ibid.*

<sup>12</sup> *R. v. Campbell*, [1999] 1 SCR 565, 1999 CanLII 676 (SCC) [*Campbell*]. Also see *Pritchard*, at paragraph 19.

<sup>13</sup> *Campbell*, at paragraph 50.

The Supreme Court returned to the last point at paragraph 20 of *Pritchard*:

Owing to the nature of the work of in-house counsel, often having both legal and non-legal responsibilities, each situation must be assessed on a case-by-case basis to determine if the circumstances were such that the privilege arose. Whether or not the privilege will attach depends on the nature of the relationship, the subject matter of the advice, and the circumstances in which it is sought and rendered. ...<sup>14</sup>

As has been noted,

... a lawyer cannot hide behind a code of silence and claim privilege with respect to all communications. At the very least, the lawyer must adduce reasonable evidence ... from which the court can infer a solicitor-client relationship and solicitor-client privilege. To meet the criteria for the privilege, it is necessary to show that: there were communications between the lawyer and client; those communications entailed the seeking or giving of legal advice, and the advice was intended to be confidential by the parties.<sup>15</sup>

Further, “it is not every item of correspondence passing between solicitor and client to which privilege attaches, for only those in which the client seeks the advice of counsel in his professional capacity, or in which counsel gives advice, are protected.”<sup>16</sup> Similarly, facts contained in a communication may not be privileged.<sup>17</sup>

<sup>14</sup> This has been recognized by the Supreme Court of the Northwest Territories: *Fulowka 1999*, at paragraph 46. Also see *Environmental Defence Canada v. Canada (Fisheries and Oceans)*, 2009 FC 131 (CanLII) [*Environmental Defence Canada*], per Layden-Stevenson J., as she then was. I also noted that in *Pritchard*, the Supreme Court of Canada emphasized that, where government lawyers are involved, whether or not the “privilege will attach depends on the nature of the relationship, the subject-matter of the advice, and the circumstances in which it is sought and rendered” (paragraph 23). The Federal Court of Appeal dismissed the government’s appeal: *Canada (Fisheries and Oceans) v. Environmental Defence Canada*, 2009 FCA 136 (CanLII). Whether this is a case in which government lawyers have been involved in giving policy or other advice outside their legal responsibilities, as between a lawyer and client, is not necessarily relevant, but courts’ observation must be kept in mind in cases where a public body claims privilege.

<sup>15</sup> *R. v. Morra*, 1991 CanLII 7303 (ONSC), at page 276.

<sup>16</sup> *Solosky*, at page 502.

<sup>17</sup> See, for example, *Donnell v. GJB Enterprises Inc.*, 2012 BCCA 135 (CanLII), at paragraph 59. Also see *British Columbia (Attorney General) v. British Columbia (Information and Privacy Commissioner)*, 2019 BCSC 1132 (CanLII), at paragraph 40.



Before assessing the Department's privilege claim in light of these principles, I will briefly discuss its reliance on *Alberta (Information and Privacy Commissioner) v. University of Calgary*,<sup>18</sup> which the Department says prevents it from permitting me to inspect the disputed records.

#### *Inspection of records and University of Calgary*

Consistent with my Office's longstanding practice, more than once I asked the Department of Justice, which is representing the Department of Finance in this matter, to provide copies of the disputed records, to assist me in assessing the privilege claim by providing the allegedly privileged records for my review. Public bodies have for many years routinely done so. This is commendable, as it allows me to assess privilege claims independently, objectively and fairly, and to do so in a cost-effective and timely manner. As recently as 2017, for example, I issued a decision dealing with solicitor-client privilege where the government had, as always, provided me with the records over which it claimed solicitor-client privilege.<sup>19</sup> As my decision in that case makes clear, my ability to review the records enabled me to fully assess the government's privilege claim and uphold it. Despite the consistent, longstanding, practice of providing allegedly privileged records for my review, on this occasion the Department declined to do so. I return to this issue later.

Turning to the Department's reliance on *University of Calgary* in refusing to provide the records to me in this case, in my October 24, 2018 letter to the Department of Finance, I said that, "[i]n order to assist me in my review, I would ask that you provide me with a copy of all records identified as being responsive to the access request". I did not purport to compel production of those records. Similarly, my March 18, 2019 letter to counsel to the Department referred in passing to the authority, under section 34(1) of the Act, to compel production of records,<sup>20</sup> but did not require production under section 34(1).

<sup>18</sup> [2016] 2 SCR 555, 2016 SCC 53 (CanLII) [*University of Calgary*].

<sup>19</sup> *Northwest Territories (Public Body) (Re)*, 2017 CanLII 73303 (NWT IPC) [*Northwest Territories*].

<sup>20</sup> The validity of the Department's assertion that section 34(1) does authorize my office to compel production of allegedly privileged records is for another day.

In a December 14, 2018 letter, the Department cited *University of Calgary* as support for its position that "records subject to solicitor-client privilege cannot be disclosed to either the Applicant or to you in your capacity as the Information and Privacy Commissioner". That letter concluded by saying that, "given the reasoning of the SCC in *Alberta [University of Calgary]*, and the language in section 34(1) of the *ATIPPA*, we are unable to disclose records that are subject to solicitor-client privilege."<sup>21</sup>

With respect, *University of Calgary* does not support the Department's position that it is prevented from providing records to me. That case dealt only with the narrow question of whether the language of section 56(2) Alberta's *Freedom of Information and Protection of Privacy Act* is explicit enough to authorize Alberta's Information and Privacy Commissioner to compel a public body to provide allegedly privileged records for review. The majority of the Supreme Court held that the Alberta provision is not sufficiently clear to permit allegedly privileged records to be compelled for review.

For the sake of completeness, I should mention that my March 18, 2019 letter referred to the *University of Saskatchewan v. Saskatchewan (Information and Privacy Commissioner)*.<sup>22</sup> In that decision, the Saskatchewan Court of Appeal interpreted the Saskatchewan equivalent to section 56(2) of the Alberta freedom of information legislation which is identical to our section 15(a). The Department's April 30, 2019 letter to me acknowledged that *University of Saskatchewan* distinguishes *University of Calgary*, but relied on the former of the two for the proposition that allegedly privileged documents should only be provided "if (a) there was a reasonable basis to question the claim of privilege<sup>23</sup> and (b) the respondent failed to respond to [a] request for an index of documents or affidavit of documents". The Department's letter went on to say this:

<sup>21</sup> That section authorizes me to require the production and examination of any record despite any "privilege available at law".

<sup>22</sup> 2018 SKCA 34 (CanLII) [*University of Saskatchewan*].

<sup>23</sup> If the Court of Appeal in *University of Saskatchewan* intended to suggest that an access applicant has some onus to show that a public body's privilege claim is not properly made, I must respectfully disagree. I see no such onus at common law or under the Act—the public body claiming the privilege must prove it, not just assert it.



Here, as in *University of Saskatchewan*, it has been clear throughout that there were legal proceedings between the GNWT and [the applicant], strongly suggesting that at least some of the documents requested by him would fall under solicitor-client privilege. In addition, there is no argument by [the applicant] that we have inappropriately asserted a claim of solicitor-client privilege.<sup>24</sup>

Because neither the reasoning nor the outcome in *University of Calgary* support the Department's position, that decision in no way prevented the Department from permitting me to inspect the records to determine if they are, as the Department alleges, protected by solicitor-client privilege.<sup>25</sup>

Before assessing the merits of the privilege claim, I must express my regret about the Department's refusal to provide the disputed records for my review.

In my March 18, 2019 letter to the Department, I expressed surprise that, "after more than 20 years, the Department of Justice has decided not to allow me access records for which solicitor-client privilege has been claimed to allow me to verify that records are, in fact, subject to section 15(a)", noting that "I have never before been denied access to the records." (I return to this letter below.)

The effective functioning of the system of independent review that the Legislature has established in the Act to a material degree depends on my Office being able to appropriately review disputed records. This is also true where solicitor-client privilege is claimed. My ability to independently and efficiently verify the government's assertion of

<sup>24</sup> This statement was the Department's first effort to provide me with more than an assertion of privilege, with reference to section 15(a) of the Act. For clarity, noting my comment in the preceding footnote, I reject the Department's suggestion that the applicant has any onus to show that the Department inappropriately asserted solicitor-client privilege.

<sup>25</sup> I note here that section 56 of the Act imposes a duty of confidentiality on me respecting information protected by solicitor-client privilege, while section 57 provides that I cannot be compelled to give evidence in any other proceeding about information that I acquire in performing my duties. There is also the fact that section 32 provides that a "review must be conducted in private". Moreover, any concern about waiver of privilege can be addressed by expressly reserving privilege when a public body delivers records to me. In addition, the principles applicable to waiver, which focus on whether fairness requires a finding of waiver, would surely lead to a decision that there has been no waiver in such circumstances. See, for example, *S. & K. Processors Ltd. Campbell Ave. Herring Producers Ltd.*, 45 BCLR 218, 1983 CanLII 407 (BCSC), per McLachlin J., as she then was.

Here, as in *University of Saskatchewan*, it has been clear throughout that there were legal proceedings between the GNWT and [the applicant], strongly suggesting that at least some of the documents requested by him would fall under solicitor-client privilege. In addition, there is no argument by [the applicant] that we have inappropriately asserted a claim of solicitor-client privilege.<sup>24</sup>

#### PeopleSoft "Systems" Issues



Donn <donn@theedge.ca>  
To: Brad\_Patzer@gov.nt.ca



12/17/2014

Brad,

You had previously provided information to my lawyer that the reason that my profile in PeopleSoft did not show the status of positions on I had applied was because of a "Systems" issue.

Seeking answers to this issue myself, I recently made an ATIP request including a request for information regarding why my PeopleSoft status was not being updated. The reply I got was that the answer was protected by legal privilege.

Can you provide me with a reasonable explanation of how the "systems" issue is now an issue protected by legal privilege?

Donn

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From: Brad Patzer [mailto:Brad\_Patzer@gov.nt.ca]  
Sent: September-17-14 1:43 PM  
To: Kristan Mcleod  
Subject: RE: Donald MacDougall

Hi Kristan

My apologies for the delayed response. I was trying to get an answer to the Peoplesoft issues; I don't have one yet. It appears to be a "systems" problem. I'm hoping that our "systems" people can resolve that soon. I will keep you posted.

<sup>24</sup> This statement was the Department's first effort to provide me with more than an assertion of privilege, with reference to section 15(a) of the Act. For clarity, noting my comment in the preceding footnote, I reject the Department's suggestion that the applicant has any onus to show that the Department inappropriately asserted solicitor-client privilege.

<sup>25</sup> I note here that section 56 of the Act imposes a duty of confidentiality on me respecting information protected by solicitor-client privilege, while section 57 provides that I cannot be compelled to give evidence in any other proceeding about information that I acquire in performing my duties. There is also the fact that section 32 provides that a "review must be conducted in private". Moreover, any concern about waiver of privilege can be addressed by expressly reserving privilege when a public body delivers records to me. In addition, the principles applicable to waiver, which focus on whether fairness requires a finding of waiver, would surely lead to a decision that there has been no waiver in such circumstances. See, for example, *S. & K. Processors Ltd. Campbell Ave. Herring Producers Ltd.*, 45 BCLR 218, 1983 CanLII 407 (BCSC), per McLachlin J., as she then was.



privilege maintains public trust and confidence in access to information in the Northwest Territories.

As noted earlier, for over 20 years government departments, including the Department of Justice, have routinely provided allegedly privileged records for my review, thus enabling timely and cost-effective resolution of disputes over privilege. There has never been any concern about this, and the practice has worked very well. In that light, I strongly encourage the territorial government—and all other public bodies—to continue to support timely and cost-effective resolution of privilege claims by providing records for my review.

*What evidence is necessary to establish solicitor-client privilege?*

My March 18, 2019 letter to the Department proposed that it “provide me with an affidavit listing each record for which solicitor-client privilege is claimed and indicating, for each record” the following information:<sup>26</sup>

- a) the date of the record,
- b) a brief description of the record,
- c) with whom it originated and to whom it was directed,
- d) the topic of discussion in the record,
- e) the number of pages of each record,
- f) if the record is an email chain, a confirmation that the entire record is subject to solicitor-client privilege and that there are no parts of the record which fall outside of the solicitor-client privilege,
- g) confirmation that the client (the Department of Finance) has identified for each specific record that it is not prepared to waive the privilege attached so as to allow it to be disclosed to the Applicant and the considerations

<sup>26</sup> This is consistent with the case law in civil litigation. See, for example, *University of Saskatchewan*, at paragraphs 75-76 and 83. I should also emphasize that my suggestion about the content of the affidavit I invited did not, of course, purport to restrict what evidence should or could be provided to support the privilege claim. That question is always determined based on whatever evidence a public body chooses to advance in light of the law on solicitor-client privilege. I also note that the kind of evidence contemplated by my March 18, 2019 letter is consistent with decisions in the Supreme Court of the Northwest Territories. See, for example, *Fallowka v. Royal Oak Mines Inc.*, 1999 CanLII 4504 (NWT SC), at paragraph 116.

(both for and against) that went into the decision to refuse disclosure, keeping in mind that section 15(a) is discretionary and discretion must be visibly exercised.

The last point arose from the fact that only a client may waive solicitor-client privilege; a client's lawyer cannot.<sup>27</sup> This is why my letter suggested there may need to be an affidavit from the client, the Department of Finance (not the Department of Justice, which is the legal advisor).

The above elements of evidence mentioned in my March 19, 2019 letter reflect my understanding of what is required to establish solicitor-client privilege at common law, with the cases usually arising in the civil litigation context. While the relevance of that law in access to information cases appears self-evident, its usefulness in reviews like this was acknowledged in *University of Calgary*.

That case involved an access to information appeal before the Office of the Information and Privacy Commissioner of Alberta. The majority in *University of Calgary* concluded that, because the public body's evidence on privilege complied with the practice in civil litigation in Alberta at the time, the adjudicator ought not to have attempted to compel production of the records. Cromwell J. dissented but concurred in the result. He noted that the Information and Privacy Commissioner had conceded that the claim of privilege had complied with the requirements of Alberta civil litigation practice in place at the time and therefore concluded that the adjudicator erred in attempting to compel the records for inspection. Abella J., differing on the standard of review but concurring in the result, also noted that the University had provided sufficient justification for its solicitor-client privilege claim, particularly in light of the law and practice applicable in the civil litigation context in Alberta.<sup>28</sup>

<sup>27</sup> See, for example, *Fallowka v. Royal Oak Mines Inc.*, 1998 CanLII 5226 (NWTSC), at paragraph 35.

<sup>28</sup> *University of Calgary*, at paragraph 70 (Cote J., for the majority) and Cromwell J. (at paragraph 130) and Abella J. (paragraph 137).



From this I conclude that the Supreme Court of Canada considered civil litigation case law to be relevant in access to information adjudications in which solicitor-client privilege is asserted.<sup>29</sup> This view was also recently adopted by the Office of the Information and Privacy Commissioner for British Columbia in *BC Attorney General (Re)*, in which the adjudicator concluded, at paragraph 29, that University of Calgary and University of Saskatchewan, "stand for the principle that if a public body properly asserts solicitor-client privilege, i.e., in the same manner required in civil procedure and nothing else in the evidence or argument indicates that the claim of privilege is invalid, then the public body's assertion is sufficient to meet its burden of proof."

What evidence is needed to support a claim of solicitor-client privilege? I have already noted the kinds of evidence that my March 18, 2019 letter suggested would assist. Those evidentiary elements are consistent with what courts expect to see.<sup>30</sup> For example, the Alberta Court of Appeal, in interpreting what evidence is required to establish privilege claims in civil litigation said this:

... [A] party must provide more information in describing a record subject to a privilege claim than merely parroting the nature of the various privileges ... in an abstract, incomplete manner, untethered to any specific record. It would be

<sup>29</sup> I am aware that, in *Calgary (Police Service) v Alberta (Information and Privacy Commissioner)*, 2017 ABQB 109 (CanLII), affirmed: 2018 ABCA 114, the Court of Queen's Bench of Alberta expressed the view, at paras 18-20, that the above-quoted passages from *University of Calgary* address only to what is required to assert privilege, not what is also necessary to prove privilege. With deference, I do not read *University of Calgary* that way. In her majority reasons, at paragraph 70, Cote J. noted civil litigation practice standards and stated that "[n]o evidence or argument was made to suggest that solicitor-client privilege had been falsely claimed by the University. In these circumstances, the delegate erred in concluding that the claim needed to be reviewed to fairly decide the issue." Cromwell J. said this at paragraph 127: "[I]t was, in my view, a reviewable error for the Commissioner's delegate to impose a more onerous standard on the University in relation to its assertion of privilege than that applicable in civil litigation before the courts. This conclusion is reinforced by the fact that the evidence filed with the Commissioner met the three-part test set out in *Sollosky v. The Queen*, 1979 CanLII 9 (SCC), [1980] 1 S.C.R. 821."

<sup>30</sup> *British Columbia (Attorney General) (Re)*, 2019 BCIPC 23 (CanLII) [*BC Attorney General*]. The same conclusion is stated in *British Columbia (Attorney General) (Re)*, 2018 BCIPC 21 (CanLII). In saying this, I am aware that, as regards civil litigation in the Supreme Court of the Northwest Territories, Rule 226(2) of the *Rules of Court of the Supreme Court of the Northwest Territories* deals with privilege claims in this language: "(2) Where, on an application under sub-rule (1), privilege is claimed in respect of a document, the Court may inspect the document for the purpose of deciding the validity of the claim for privilege and consider all relevant evidence adduced that tends to establish or destroy the claim for privilege." This clearly contemplates that the Supreme Court will consider "all relevant evidence" but does not require inspection of allegedly privileged in all cases. If sufficient "relevant evidence" is provided, the Supreme Court may find that the privilege has been made out. This is the approach I have taken here, i.e., to afford the Department an opportunity, not having provided the records to me, to provide evidence to back up its assertion of privilege.

ironic, indeed, if the Rules were interpreted so as to allow a party not to provide at least a brief description of records where that description is most required. After all, these are the records that another party is not entitled to examine unless it successfully challenges the privilege claim.<sup>31</sup>

As the Alberta Court of Appeal said in *ShawCor*, "[p]rivilege protects the integrity of the adversarial system and shields parties from damage to legitimate interests and relationships",<sup>32</sup> but a party to litigation who seeks to withhold documents from disclosure to the other party must still prove its claim of privilege.

Consistent with this, I have kept in mind the fact that, as the Department has affirmed, there is, or has been, litigation under way between the applicant and the territorial government. This is part of the context for my review, but the existence of litigation, or some other kind of legal dispute, is not determinative of the Department's privilege claim.<sup>33</sup> The Department must still establish that its claim of solicitor-client privilege is valid, in this case through affidavit or other evidence sufficient to make out that claim. The cases make it clear that solicitor-client privilege can only be claimed document by document, with each document being required to meet the criteria for the privilege. Whether the Department has done so depends on the totality of the evidence before me. For reasons given below, I conclude that the Department has not met its burden.

#### ***Assessment of the Department's evidence on privilege***

Because I have not been able to review the records, I only have the Department's evidence on the privilege issue. The Department has submitted an affidavit sworn May 31, 2019 by its Director of Legal Services, Brad Patzer. He deposes that he is licensed to

<sup>31</sup> *Canadian Natural Resources Limited v ShawCor Ltd.*, 2014 ABCA 289 (CanLII) [*ShawCor*], at para 72. I also note that, in British Columbia, Rule 7-1(7) of the *Supreme Court Rules*, BC Reg 168/2009, requires an adequate description of documents for which privilege is claimed: "The nature of any document for which privilege from production is claimed must be described in a manner that, without revealing information that is privileged, will enable other parties to assess the validity of the claim of privilege."

<sup>32</sup> *ShawCor*, at para 72.

<sup>33</sup> I underscore here that, as noted earlier, the Department has on several occasions confirmed it is relying on solicitor-client privilege, not litigation privilege or any other privilege under the law of evidence.



practice law in the Northwest Territories and “was the lawyer providing legal advice to” the territorial government and its officials, “and had carriage and responsibility of this file” (paragraph 1).<sup>34</sup> His evidence is also that, since 2014, the Department’s Legal Division has been providing legal advice relating to termination of the applicant’s employment, and related issues (paragraph 3).

Regarding the applicant’s access to information request to the Department of Finance, Brad Patzer deposes as follows, at paragraph 4:

... I had an opportunity to review the documents subject to the information request and identified all correspondence and legal advice that were [*sic*] subject to solicitor-client privilege.

As noted in the Patzer affidavit, on April 30, 2019 the Department provided me with an index to the privileged records for which privileged is being claimed, as noted in the Patzer affidavit:

9. Attached hereto and marked as Exhibit “A” to my affidavit, is the index of the solicitor-client privileged documents that I confirm are correspondence and legal advice between legal division and various GNWT officials relating to the Litigation.

This amounts to a statement of his opinion on the very issue that is before me for decision. If I were to accept this, without more, I would be improperly delegating my responsibility to assess and adjudicate privilege claims to the very departments claiming it.

<sup>34</sup> The affidavit does not specify what the “file” was or is. As noted below, various records appear to be about a range of matters, which may all relate to the applicant but are not clearly connected to a single matter or file. This makes it difficult to assess the Department’s evidence on privilege.

The Federal Court of Canada confronted a similar situation in *Environmental Defence Canada v. Canada (Fisheries and Oceans)*.<sup>35</sup> An official with the federal government department deposed that the redacted portions of the document in question “reflected the legal advice obtained from counsel”, adding that he “expected these communications between the DOJ counsel and the DFO officials to be and to remain confidential.”<sup>36</sup> The Court noted that these statements tracked the wording of the elements of solicitor-client privilege and said this:

[21] Whether solicitor-client privilege is properly claimed is a substantive issue to be determined by the court: *Goodis*. If I were to accept paragraphs four and five of Mr. Ahluwalia’s affidavit as conclusive, I would be abdicating my judicial responsibility to determine the substantive issue. That is not to say that Mr. Ahluwalia’s evidence is to be disregarded. Rather, it is a question of the weight that ought to be assigned to it.

The Court concluded that the government “has fallen short of this standard and has failed to provide the information required for a proper assessment.”<sup>37</sup>

My task is to decide whether, in addition to Brad Patzer’s opinion that all of the listed records are privileged in their entirety, there is sufficient evidence to establish the necessary elements of solicitor-client privilege.

The index of documents appended to the affidavit<sup>38</sup> is, to say the least, terse as the following examples illustrate:

<sup>35</sup> 2009 FC 878 (CanLII) [*Environmental Defence Canada*].

<sup>36</sup> *Environmental Defence Canada*, at paragraph 19.

<sup>37</sup> *Environmental Defence Canada*, at paragraph 24.

<sup>38</sup> As the affidavit notes, at paragraph 8, this index was included in the Department’s April 30, 2019 letter to me.



- Line 1 refers to an "email string" and lists five individuals as parties, one of whom is the deponent, Brad Patzer. Regarding the circumstances surrounding this communication, the index simply states that the email string's "subject" is "Record of Employment".
- The record at line 3, which lists six individuals on the email string (including Brad Patzer) is described solely as "Please Review: Email for [applicant's name]".
- Line 6 is an email between Brad Patzer and another individual, the subject of which is "FW: [applicant's name] – Application".
- At line 8, an email between Brad Patzer and another individual has the subject "FW: [applicant's name] – reference check".
- Line 13 refers to an email that has four parties listed, including Brad Patzer, the subject of which is "FW: Open Issues".
- The subject of the record at line 16 is "RE: Ultimate Removal – Proof of Move".
- The subject of the record at line 19 is "FW: PeopleSoft Delegation".
- The subject of the email at line 35 is "RE: Access Request – [applicant's name]".
- Line 36 records an email between Brad Patzer and another individual with the subject "RE: [applicant's name] Agreement".
- At line 43 there is a 2014 email string among six individuals, including Brad Patzer—and, according to the index, the applicant—that is described as "RE: Upcoming End of Current Employment – Yellowknife – M". (I return to this record below.)
- Line 82 is an email string among seven individuals, one of whom is Brad Patzer, with the subject "FW: Termination Agreement response – [applicant's initials]."

Other records in the index have the same subjects as stated above. Most of the emails have the applicant's name as the sole stated subject.

Again, not everything a lawyer does is privileged. Only confidential communications between lawyer and client related to the seeking or giving of legal advice are privileged. In the public sector context, it is necessary to ascertain whether a lawyer is engaged as a lawyer, and in relation to the seeking or provision of legal advice, as opposed to nonlegal

15

**From:** Sylvia Haener  
**To:** Nicole MacNeil; Brad Patzer; Mark Aitken  
**Subject:** access request - Donn Macdougall  
**Date:** Tuesday, October 07, 2014 2:07:05 PM  
**Attachments:** Scanned from a Xerox multifunction device.pdf

Please see the attached which Denise Anderson just provided me. Much of this request relates to situations that arose due to his being considered terminated and us then trying to negotiate a termination agreement. He signed the agreement last week, but it is still under review by us and has not been signed by the GNWT. Denise wanted to transfer this request in its entirety to Finance as she thought it related to Psoft. I advised her that I needed to provide it to legal counsel and we need to seek advice in relation to it. **Brad - Help!!!!!!**

Sylvia Haener,  
 Deputy Minister, Department of Justice,  
 Government of the Northwest Territories.  
 phone: 867-920-6197  
 fax: 867-873-0307  
 e-mail: sylvia\_haener@gov.nt.ca

ACCESS TO INFORMATION AND PROTECTION OF PRIVACY						
ACCESS REQUEST REVIEW						
DETAILED REVIEW OF RECORDS						
Request No.	Document No.	No. of Pages	Document Date	Document Description	Exception Applied	Comments/Explanation
2018-027/NM001						
PERSONAL INFORMATION: Personal Info - Personal File - Requests or Inquiries (March 12, 2014 to June 19, 2015)						
TIP from ALBERTA COLLEGE - Records from 2014 communicating any reason or explanation for leaving employment and any reason should not be employed with AC (Donnell (Donn) Macdougall - 11981)						
LABOUR RELATIONS RECORDS						
2018-027/NM001	4	7	7-Oct-2014	Access request - Donn Macdougall (+attach)	s.21(1), s.15(a)	
2018-027/NM001	8	19	19-Jun-2015	10. Macdougall Amended ROE (+ attach)	s.21(1)	
2018-027/NM002	2	15	15-Apr-2014	FW Termination Agreement	s.14(1)(a)	
2018-027/NM011	4	18	18-Jun-2015	GNWT Record of Employment - Replacement ROE	s.14(1)(a)(b)	
2018-027/NM012	1	12	12-Mar-2015	Please Review: Email for Donn Macdougall	s.14(1)(a)(b)	
2018-027/NM040	2	22	22-Jul-2014	RE: D Macdougall		
2018-027/NM042	2	18	18-Jun-2015	RE: D Macdougall (2)	s.14(1)(b)	
2018-027/NM044	3	18	18-Jun-2015	RE: D Macdougall (3)	s.14(1)(b)(i)	
2018-027/NM065	3	18	18-Jun-2015	RE: GNWT Record of Employment	s.14(1)(a)(b), s.15 (b)	
2018-027/NM075	3	23	23-Jul-2014	RE: Termination Agreement	s.14(1)(b), s.15(b)	
2018-027/NM076	2	16	16-Jul-2014	RE: Termination Agreement (2)	s.15(b)	
2018-027/NM077	3	21	21-Jul-2014	RE: Termination Agreement (3)	s.15(b)	
2018-027/NM078	3	23	23-Jul-2014	RE: Termination Agreement (4)	s.14(b), s.15(b)	
2015 REQUEST RECORDS						
2018-027/NM093	3	18	18-Jul-2014	Competitions: Christy's Active Files	Section 14 (1)(a)	
PATROLL RECORDS						
PERSONNEL FILE RECORDS						
2018-027/NM114	2	27	27-Mar-2014	e-mail: GAGNON to BEAUSIEU (FW: Donn Macdougall)		
2018-027/NM115	2	25	25-Mar-2014	attachment: Letter to KM March 23, 2014		
2018-027/NM115	2	25	25-Mar-2014	Revised by MacLeod (Donn Macdougall - Adjusted GNWT Offer)		
DIMS RECORDS SEARCH						
Document						
Creation Date: March 12, 2014 to June 19, 2015						
Modified Date: March 12, 2014 to December 31, 2015						

2018-027/NM001

7-Oct-2014

access request - Donn Macdougall (+attach

s.21(1), s.15(a)

Disclosure harmful to another individual's safety

21. (1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, where the disclosure could reasonably be expected to endanger the mental or physical health or safety of an individual other than the applicant.

Privileged information

15. The head of a public body may refuse to disclose to an applicant  
 (a) information that is subject to any type of privilege available at law, including solicitor-client privilege;



activities. The fact that a lawyer is included in communications is not sufficient to cloak those communications with privilege unless the necessary elements of solicitor-client privilege are also present. In the civil context, certainly, facts and actions are ordinarily not privileged.<sup>39</sup>

In this case, the affidavit identifies each record by date and identifies the "parties" to each email or email string. The affidavit refers to "various GNWT officials" but, apart from Brad Patzer, I do not know who the other individuals are or what they do, *i.e.*, the affidavit is silent on their job titles and functions and says nothing about their role in the "file" to which the affidavit alludes. Nor does it say anything about their roles in relation to the listed correspondence or the confidential seeking or giving of legal advice. The affidavit is silent as to who the author of each email was, for example. In the case of emails marked as "FW:", it is reasonable to infer that at some point someone forwarded an email to someone else, but I have been given no details about this, including whether Brad Patzer or another lawyer was merely a recipient of a forwarded email that someone else might have created for some reason, including a reason not related to the giving or seeking of legal advice.

I also note that Brad Patzer's evidence is that the listed records "are correspondence and legal advice between legal division and various GNWT officials relating to the Litigation."

This separates "correspondence" from "legal advice" without differentiating between the two. Nor does the affidavit provide evidence that each item of "correspondence" is confidential, what the purpose is of each piece of "correspondence", or which of them might contain or relate to the seeking or giving of "legal advice".

In essence, therefore, I am left with Brad Patzer's statement of his own opinion that, having reviewed all of the documents, they are all entirely protected by solicitor-client privilege. Even if I treat this as evidence in relation to each specific record, *i.e.*, evidence that each and every record falls within the privilege, I am left in effect with his blanket

<sup>39</sup> See, for example, *Donell v. GJB Enterprises Inc.*, 2012 BCCA 135 (CanLII). In the criminal law context, see *Descôteaux v. Mierzewski*, 1982 CanLII 22 (SCC), [1982] 1 S.C.R. 860.

COURT FILE NUMBER:

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE:

APPLICANT:

RESPONDENTS:

DOCUMENT:

ADDRESS FOR SERVICE AND CONTACT  
INFORMATION OF PERSON FILING THIS  
DOCUMENT:

Clerk's stamp:

1903 00779

Edmonton

THE GOVERNMENT OF THE NORTHWEST  
TERRITORIES

DONALD MACDOUGALL also known as  
DONN MACDOUGALL and  
GODADDY.COM, LLC

ORIGINATING APPLICATION

Sharon A. Roberts  
Field LLP  
Barristers and Solicitors  
2500, 10175 - 101 Street NW  
Edmonton, AB T5J 0H3  
Ph: (780) 423-3003 Fax: (780) 428-9329  
File No. 38301-12



#### NOTICE TO RESPONDENT

This application is made against you. You are a Respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date:	January 15, 2019
Time:	10:00 a.m.
Where:	Edmonton Law Courts, 1A Sir Winston Churchill Square, Edmonton, AB T5J 0R2
Before whom:	Presiding Justice in Chambers

Go to the end of this document to see what you can do and when you must do it.



assertion of privilege without sufficient evidence to support that perspective. The descriptions of the documents, and such evidence as I have about the surrounding circumstances, is not sufficient to differentiate between communications that are privileged and those which may not be.

The challenge is, for example, illustrated by the fact that some of the stated subjects seem to suggest, at least on the surface, that some of the emails forwarded to or among various parties, including Brad Patzer, were apparently about subjects that may not necessarily relate to the seeking or giving of legal advice. For example, an email that has been forwarded on such subjects as "proof of move", "upcoming end of current employment" and "reference checks" might (or might not) be about employment, or human resources, matters without any relationship to seeking or giving legal advice.<sup>40</sup> The fact that Brad Patzer was a recipient, or possibly a sender, of emails on these topics does not, as the above principles confirm, suffice on its own to establish privilege.

This is not to suggest that, because of the subject descriptions that have been chosen, the related emails are definitively not privileged. I just cannot ascertain, record by record, which are privileged, and which are not. I conclude that the evidence provided to me through Brad Patzer's affidavit is insufficient to establish, on the necessary balance of probabilities, that the necessary elements of solicitor-client privilege have been proven in relation to each record over which that privilege is claimed. The evidence adduced by the Department does not meet its burden to establish the privilege it has claimed and make the appropriate recommendation below.

#### ***Proof of exercise of discretion by the Department of Finance***


As noted earlier, the Department of Finance—the public body whose decision is actually under review here—indicated in its November 8, 2018 letter to me that the "Department of Justice Legal Division will not waive privilege and provide access to this information". As

<sup>40</sup> This observation is even more forceful in the case of emails that are only described as being about the applicant by name.

#### **Upcoming End of Current Employment - Yellowknife - M**

 Do-Not-Reply@gov.nt.ca  
To: Beth\_Collinson@gov.nt.ca; donn@theedge.ca  
Cc: datamanagement\_yk@gov.nt.ca

     
Tue 9/16/2014 10:16 PM

Based on the Information in the GNWT's Human Resource Information System, the expected end date of employment for  is 2014-10-07.

If there are plans to extend the employment of  in their current job, please ensure that the request for extension is completed and sent to Human Resources as soon as possible.

#### **FW: Upcoming End of Current Employment - Yellowknife - M**

 Donn <donn@theedge.ca>  
To: gary\_macdougall@gov.nt.ca

     
Tue 9/16/2014 10:39 PM

Gary,

I've received this message, like so many other messages, at my home, outside of working hours--this is getting tiresome. Fix this.

#### **FW: Upcoming End of Current Employment - Yellowknife - M**

 Gary MacDougall <gary\_macdougall@gov.nt.ca>  
To: Beth Collinson <Beth\_Collinson@gov.nt.ca>

     
Wed 09/17/2014 9:30 AM

Hi Beth,

Although "so many other messages" is greatly exaggerated, can steps be taken to ensure that Donn does not receive anything from PeopleSoft in his former supervisory capacity. I'm not sure how his home email would have ever been the email to which information as a supervisor would be sent. Had it been his former work email, it would have been redirected to me.

#### **RE: Upcoming End of Current Employment - Yellowknife - M**

 Beth Collinson <Beth\_Collinson@gov.nt.ca>  
To: Gary MacDougall <gary\_macdougall@gov.nt.ca>  
Cc: Christy Campbell <Christy\_Campbell@gov.nt.ca>

     
Wed 09/17/2014 4:28 PM

Hi Gary

I've talked to one of our systems staff and they have something in mind to stop these types of notifications from going to his home email

#### **RE: Upcoming End of Current Employment - Yellowknife - M**

 Gary MacDougall <gary\_macdougall@gov.nt.ca>  
To: Beth Collinson <Beth\_Collinson@gov.nt.ca>  
Cc: Christy Campbell <Christy\_Campbell@gov.nt.ca>



     
Wed 09/17/2014 4:46 PM

Thanks, Beth

Even if it was changed back to his former work email, that would work as this email still exists and is redirected to me.

#### **RE: Upcoming End of Current Employment - Yellowknife - M**

 Beth Collinson <Beth\_Collinson@gov.nt.ca>  
To: Gary MacDougall <gary\_macdougall@gov.nt.ca>  
Cc: Christy Campbell <Christy\_Campbell@gov.nt.ca>

     
Wed 09/17/2014 4:47 PM

Hi -- yes, turns out that is what they did

:)  
beth



also noted earlier, at common law only a client can waive privilege. Under the Act, a discretionary exemption from disclosure such as section 15(a) may only be exercised by the public body that received the request and made the decision on disclosure. I am not aware on what basis the Department of Finance purported to delegate its discretion to the Department of Justice or permit the Department of Justice to exercise a client's rights in respect of privilege. At all events, if I had concluded that solicitor-client privilege had been established, I would have remitted the matter to the Department of Finance to consider the exercise of its discretion under section 15(a).<sup>41</sup>

### Severing of records

Further, if I had concluded that solicitor-client privilege had been established here, I would note that section 5(2) of the Act requires public bodies to redact only the information that is protected by one or more of the exemptions and release the remainder. This applies to privilege records, as is the case in the civil litigation context. It may be the case that entire records are privileged, but there is no evidence that the Department of Finance has considered this.<sup>42</sup>

### A passing observation about the importance of providing records to my office

As already noted, the territorial government has for the past 20 years, without fail, readily provided my office with records over which it claims solicitor-client privilege. This is the first time a public body has refused to do so. Its decision has implications worth underscoring.

A key objective in creating expert statutory tribunals is to provide expert, timely and cost-effective resolution of such disputes without burdening the courts' dockets unless an appeal or judicial review application is launched. For this reason, the Legislature, like other Canadian legislatures, created the position of Information and Privacy

<sup>41</sup> This is an issue that I raised in my communications with the Department of Justice, but I did not receive any submissions or evidence on this point.

<sup>42</sup> This is also an issue that I brought to the attention of the Department of Justice in correspondence.

Commissioner to review and adjudicate public body decisions to refuse to disclose information, including where a solicitor-client privilege claim is made.

My office has been successfully performing this function for decades. We resolve most requests for review—including those involving privilege claims—through expert, timely and cost-effective investigations. We do so in many cases without needing to issue decisions such as this. This avoids the significant cost and delay for all concerned.

In privilege cases, as in others, my office's ability to review records facilitates the timely and cost-effective resolution of privilege claims. A public body's refusal to disclose records without, as in this case, otherwise satisfying its burden under the Act, unnecessarily imposes costs and delay on all involved.

Nor are there plausible concerns that my office will disclose privileged records inappropriately. This has never happened during an investigation since we ensure that all records, notably allegedly privileged records, are kept secure in our premises. Further, where we conduct a review hearing, section 31(1) requires that it be private, which is consistent with section 56, which imposes on my office a duty to keep confidential all information that we acquire in discharging our duties, including information that is alleged to be privileged.

On completing a review my office does not disclose records that we have recommended be disclosed. That is the role of the public body.<sup>43</sup>

The government's repeated refusal to co-operate with my office ignores the significant protections for allegedly privileged records afforded by my office's consistent policy and practices and, significantly, by the Act. Failure to provide records jeopardizes the timely and cost-effective resolution of disputes and risks, as in this case, government failing to

<sup>43</sup> Section 37 of the Act.



make its case for privilege, when my review of the disputed records in principle could have led to a different outcome.

With these observations in mind, I urge the Department and all other public bodies to resume, except in the clearest cases, the decades-old practice of providing records over which privilege is claimed. This is an area in which I firmly believe that “co-operation should be the rule and litigation the exception.”<sup>44</sup> To reassure public bodies about our practices, I intend soon to issue a policy to guide practices in this area. That policy will ensure that my office will ask for records only where it is necessary to do so in order to determine whether the privilege claim is well-founded.<sup>45</sup>

## CONCLUSION

Having found that the Department of Finance has not met its burden under the Act to establish that section 15(a) of the *Access to Information and Protection of Privacy Act* authorizes it to refuse to disclose the requested records, I recommend that the Department of Finance disclose the entirety of all of those records that it has withheld under that provision.

Elaine Keenan Bengts  
Information and Privacy Commissioner

<sup>44</sup> *British Columbia (Auditor General) v. British Columbia (Attorney General)*, 2013 BCSC 98 (CanLII), per Bauman CJSC (now CJBC), at paragraph 151.

<sup>45</sup> In many cases it will not be necessary for my office to see records. For example, if my office is satisfied, based on a public body's written representation that a disputed record is a legal opinion given to a public body by its lawyer, my office is highly unlikely to need to see the record itself during the investigation.

## NORTHWEST TERRITORIES INFORMATION AND PRIVACY COMMISSIONER Review Report 19-208

File: 18-184-4  
November 6, 2019  
Citation: 2019 NTIPC 26

## BACKGROUND

On January 11, 2018, the applicant made a request under the Act to the Department of Finance for access to records relating to a matter in which the applicant was involved with

Consistent with my Office's longstanding practice, more than once I asked the Department of Justice, which is representing the Department of Finance in this matter, to provide copies of the disputed records, to assist me in assessing the privilege claim by providing the allegedly privileged records for my review. Public bodies have for many years routinely done so. This is commendable, as it allows me to assess privilege claims independently, objectively and fairly, and to do so in a cost-effective and timely manner. As recently as

In my March 18, 2019 letter to the Department, I expressed surprise that, “after more than 20 years, the Department of Justice has decided not to allow me access records for which solicitor-client privilege has been claimed to allow me to verify that records are, in fact, subject to section 15(a)”, noting that “I have never before been denied access to the records.” (I return to this letter below.)

As noted earlier, for over 20 years government departments, including the Department of Justice, have routinely provided allegedly privileged records for my review, thus enabling timely and cost-effective resolution of disputes over privilege. There has never been any concern about this, and the practice has worked very well. In that light, I strongly encourage the territorial government—and all other public bodies—to continue to support timely and cost-effective resolution of privilege claims by providing records for my review.

As already noted, the territorial government has for the past 20 years, without fail, readily provided my office with records over which it claims solicitor-client privilege. This is the first time a public body has refused to do so. Its decision has implications worth underscoring.

Having found that the Department of Finance has not met its burden under the Act to establish that section 15(a) of the *Access to Information and Protection of Privacy Act* authorizes it to refuse to disclose the requested records, I recommend that the Department of Finance disclose the entirety of all of those records that it has withheld under that provision.



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## **THE DEMAND**



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[www.amazon.ca/dp/B0BLB9W1DN](http://www.amazon.ca/dp/B0BLB9W1DN)


## RE: Discontinuance or Summary Judgment: GNWT v. MacDougall



Sharon Roberts <[sroberts@fieldlaw.com](mailto:sroberts@fieldlaw.com)>  
To: 'Donn MacDougall'



2/19/2020

 This message has been replied to or forwarded.



Order with Schedules A - D (GNWT v MacDougall) - February 2020(12266334).pdf  
2 MB

Donn,

Please see attached form of Order I propose to apply for Justice Dunlop to grant. I believe it is self-explanatory; however, if you require clarification or have questions about it please let me know.

Should you decline to consent to the terms proposed, my instructions are to seek Justice Dunlop's permission to apply to him for same. If that is necessary, I will apply for an Order on a with costs basis, for full indemnification of all steps after this point. I look forward to hearing from you.

Sharon



**Sharon A. Roberts** | Partner  
T 780-423-9591 | F 780-428-9329 | [sroberts@fieldlaw.com](mailto:sroberts@fieldlaw.com)  
2500 - 10175 101 ST NW, Edmonton AB T5J 0H3

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**From:** Donn MacDougall [<mailto:donn.macdougall@gmail.com>]

**Sent:** Wednesday, February 05, 2020 7:17 PM

**To:** Sharon Roberts

**Subject:** Discontinuance or Summary Judgment: GNWT v. MacDougall

Sharon,

Can you advise if you will be filing a Discontinuance on behalf of your client? I'd like to give you a reasonable opportunity to do so before I apply for Summary Judgment.

As you know, Summary Judgment (if successful) will be *res judicata*, whereas a Discontinuance is no bar to further proceedings.

Regards,

Donn



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[www.amazon.ca/dp/B0BLB9W1DN](http://www.amazon.ca/dp/B0BLB9W1DN)

## **THE DRAFT**



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COURT FILE NUMBER: 1903 00779

COURT Court of Queen's Bench of Alberta

JUDICIAL CENTRE: Edmonton

APPLICANT: THE GOVERNMENT OF THE NORTHWEST TERRITORIES

RESPONDENT PARTY TO THIS ORDER: DONALD MACDOUGALL also known as  
DONN MACDOUGALL

DOCUMENT: **ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PERSON FILING THIS DOCUMENT: Sharon Roberts  
Field LLP  
Barristers and Solicitors  
2500, 10175 101 Street NW  
Edmonton, AB T2P 1M7  
Ph: (780) 423-9591 Fax: (780) 428-9329  
Email: sroberts@fieldlaw.com  
File No. 38301-12

DATE ON WHICH ORDER WAS PRONOUNCED: February \_\_, 2020

NAME OF JUSTICE WHO MADE THIS ORDER: Justice G.S. Dunlop

LOCATION OF WHERE ORDER WAS PRONOUNCED: Edmonton

UPON the Application of the Applicant, The Government of the Northwest Territories (the "GNWT"); AND UPON noting the prior consent on the Court record to disclose to the Court that the Confidentiality Agreement signed March 19, 2019 into which the Parties entered as referenced in the Order of Justice Gill granted March 20, 2019, a copy of which is appended to this Order as **Schedule "A"** (the "Confidentiality Agreement"); AND UPON NOTING that a copy of the Sealing Order granted by Justice Dunlop on January 15, 2019 is appended to this Order as **Schedule "B"** (the "Sealing Order"); AND UPON NOTING that a copy of the Order of Justice Gill granted on March 20, 2019 continuing the Sealing Order and incorporating by reference the Confidentiality Order, is appended to this Order as **Schedule "C"** (the "Gill Order"); AND UPON NOTING that the Sealing Order was upheld and not varied or set aside upon reapplication to Justice Dunlop, per his Order granted November 13, 2019, finalized before Justice Dunlop on December 17, 2019 and filed December 18, 2019, a copy of which is appended to this Order as **Schedule "D"** (the "Further Dunlop Order"); AND UPON NOTING the consent of the Respondent, Donald MacDougall, also known as Donn MacDougall ("Mr. MacDougall"), endorsed below;



**IT IS HEREBY ORDERED THAT:**

1. The Sealing Order (Schedule "B") is and shall remain in full force and effect without limitation, notwithstanding the discontinuance of the within action and, accordingly, the sealed Affidavit of Denise Anderson sworn January 9, 2019 shall remain sealed on the Court file and shall not be made publicly available. The direction to this effect set out in Gill Order (Schedule "C") and upheld by the Further Dunlop Order (Schedule "D") is extended indefinitely.
2. Mr. MacDougall shall not make any further posting online or engage in any other form of publication, in whole or in part, of any personally identifying information of third parties, including current and former employees of the GNWT, that:
  - a. Mr. MacDougall acquired during his employment with the GNWT, which personally identifying information he would not have received but for the fact that he was then an employee of the GNWT, which, for greater particularity, includes but is not necessarily limited to:
    - i. All personally identifying information contained in whole or in part within, or excerpted in whole or in part from, records and/or information that Mr. MacDougall received or to which he had access during his employment with the GNWT;
    - ii. All personally identifying information contained in whole or in part within, or excerpted in whole or in part from, records and/or information that Mr. MacDougall received or to which he had access following the termination of his employment, including but not limited to that period of time in which time he continued to receive payments from the GNWT pertaining to his former employment;
    - iii. All personally identifying information contained in whole or in part within, or excerpted in whole or in part from, any record or information appended as an exhibit to affidavits sworn in this court action by Mr. MacDougall, Lynette Senio, Trina Jackson, Denise Anderson and/or Adam Vivian;
    - iv. All personally identifying information contained in whole or in part within, or excerpted in whole or in part from, any information privacy disclosure request made by Mr. MacDougall related in any way whatsoever to his employment with the GNWT and/or any information privacy response, decision, investigation and/or report received by Mr. MacDougall and related in any way whatsoever to his employment with the GNWT; and

- v. Copies or versions of personally identifying information contained in any or more of the above sources that Mr. MacDougall at any point in time modified, manipulated, edited, reproduced, recreated or otherwise derived, in whole or in part, from any portion of any record or information he received during or after the termination of his employment with the GNWT and that he would not have had access to or received but for that relationship of employment or former employment, including, for greater particularity, any alleged "works" that Mr. MacDougall claimed to have created using personally identifying information contained in records and/or information he received from the GNWT, via PeopleSoft or otherwise, and to which he would not have had access other than as a result of his employment relationship with the GNWT prior to and/or following its termination.
3. Mr. MacDougall shall comply strictly with the terms of the Confidentiality Order.
4. The GNWT has leave to apply with email notice to Mr. MacDougall of not less than one (1) day for injunctive relief to prohibit any further unauthorized publication of personally identifying information, and of not less than three (3) business days for a finding of civil contempt, if, at any time, Mr. MacDougall breaches this Order or is believed in good faith by the GNWT to have breached this Order by publishing in any forum and any format, including online, print, electronic, digital, visual, audio, audio-visual, animated or any other form any personally identifying information of former and/or current employees of the GNWT or otherwise related to his employment or former employment with the GNWT and to which Mr. MacDougall would not have had access but for that past employment. Email service to [donn.macdougall@gmail.com](mailto:donn.macdougall@gmail.com) shall be good and sufficient for the purposes of serving notice of an application brought under this paragraph or any other paragraph in this Order.
5. This court action is hereby discontinued.
6. This Order and the directions set out in this Order shall remain in effect notwithstanding the discontinuance of this court action or the closing of Court of Queen's Bench of Alberta File 1903 00779.
7. There shall be no costs payable by either party in relation to this Order or the discontinuance of this court action.
8. Costs shall be payable to the successful party by the unsuccessful party on a full indemnification basis if any one or more terms of this Order are found by a Justice of the Court of Queen's Bench of Alberta to have been breached, which application shall be brought with notice to the opposing party.



\_\_\_\_\_  
JUSTICE OF THE COURT OF QUEEN'S BENCH OF ALBERTA

CONSENTED TO BY:

**Donald MacDougall**

\_\_\_\_\_  
Donald MacDougall, also known as Donn MacDougall

## THE REPLY



**Paperback available on Amazon:**  
[www.amazon.ca/dp/B0BLB9W1DN](http://www.amazon.ca/dp/B0BLB9W1DN)

## Re: Discontinuance or Summary Judgment: GNWT v. MacDougall



Donn MacDougall <[donn.macdougall@gmail.com](mailto:donn.macdougall@gmail.com)>  
To Sharon Roberts



2/24/2020



MacDougall 2020 February 24.pdf  
98 KB

Sharon,

Well, your draft Order is interesting . . .

And by "interesting" I mean an incredible assault on the *Charter of Rights and Freedoms*, Freedom of Expression, and the open court principle.

My reply is attached.

Regards,

Donn

On Wed, Feb 19, 2020 at 6:56 AM Sharon Roberts <[sroberts@fieldlaw.com](mailto:sroberts@fieldlaw.com)> wrote:

Donn,

Please see attached form of Order I propose to apply for Justice Dunlop to grant. I believe it is self-explanatory; however, if you require clarify of have questions about it please let me know.

Should you decline to consent to the terms proposed, my instructions are to seek Justice Dunlop's permission to apply to him for same. If that is necessary, I will apply for an Order on a with costs basis, for full indemnification of all steps after this point. I look forward to hearing from you.

Sharon



**Sharon A. Roberts** | Partner  
T 780-423-9591 | F 780-428-9329 | [sroberts@fieldlaw.com](mailto:sroberts@fieldlaw.com)  
2500 - 10175 101 ST NW, Edmonton AB T5J 0H3

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## Donn MacDougall

26 Edward Way, St. Albert, AB, T8N 6T4 • donn.macdougall@gmail.com • 587-357-3666

February 24, 2020

Field Law  
2500 – 10175 101 ST NW  
Edmonton AB T5J 0H3

By email: sroberts@fieldlaw.com

**Re: The Government of the Northwest Territories v Donald MacDougall #1903 00779**

Sharon:

I am in receipt of your draft Order.

You may recall that we achieved a full and final settlement of this matter on March 19, 2019.

You may also recall that nothing in that agreement remained undone by the close of business on March 19, 2019.

Notwithstanding this fact you adjourned the matter *sine die* on March 20, 2019.

The adjournment of this matter the day after we resolved all issues in dispute caused me some inconvenience with both the Law Society of Alberta and Go-Daddy—both of which were confused at how a matter which had reached a full and final settlement could be adjourned *sine die*. As a result, I have suffered damages in resolving my issues with both . . . but that, and your client's undertaking to pay damages, is a matter for another day.

The fact that the matter remains adjourned *sine die* does not change the fact that we reached a full and final settlement on March 19, 2019.

Your draft Order is rejected.

Please recall that I did afford your client a reasonable opportunity to discontinue this action and refile.

Should your client now wish to proceed by way of a discontinuance at this late date, I would assert that it should be under the same conditions as imposed in *Shergill v. Skene*, 2011 ABQB 334 (para. 18).

Regards,



Donn MacDougall

RE: Special Chambers Date - October 10, 2019



Sharon Roberts <sroberts@fieldlaw.com>

To 'Donn MacDougall'

Cc Adam Ollenberger



7/18/2019



11065831.PDF  
88 KB



11132741.PDF  
202 KB

Dear Mr. MacDougall,

Thank you for your email. As you may recall, we entered into a resolution involving both an Order and a Confidentiality Agreement, copies of each of which are attached for ease of reference. **These documents concluded the matter** and we are not waiting for any final hearing.

Sincerely,



**Sharon A. Roberts** | Partner

T 780-423-9591 | F 780-428-9329 | [sroberts@fieldlaw.com](mailto:sroberts@fieldlaw.com)

2500 - 10175 101 ST NW, Edmonton AB T5J 0H3

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**From:** Donn MacDougall [<mailto:donn.macdougall@gmail.com>]

**Sent:** Tuesday, July 16, 2019 12:49 PM

**To:** Sharon Roberts; Adam Ollenberger

**Subject:** Special Chambers Date - October 10, 2019

Hello again,

RE: GNWT v. MacDougall

I see that October 10, 2019 has opened up for special chambers, and if you're available, I would like you to secure the date for the hearing of final relief in this matter.

If that date is not acceptable to you, any other date in 2020 would be fine.

Regards,

Donn



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## THE REPORT



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https://www.ntassembly.ca/taled-documents/2019-2020-ar

Legislative Assembly  
OF THE NORTHWEST TERRITORIES

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of the Office of the Information and Privacy Commissioner of the Northwest Territories

## 2019-2020 Annual Report of the Office of the Information and Privacy Commissioner of the Northwest Territories

**Tabled Document Number:**  
205-19(2)

**Date Tabled:**  
Tuesday, October 27, 2020

**Document:**  
[2019-2020 Annual Report of the Office of the Information  
and Privacy Commissioner of the Northwest Territories](#)

**Member:**  
Speaker

**Document Number:**  
205

**Assembly Number:**  
19

**Session Number:**  
2





19/20

OFFICE OF THE  
INFORMATION  
AND PRIVACY  
COMMISSIONER  
NORTHWEST TERRITORIES

Annual Report

### Review Report 19-207

**Category of Review:** Access to Information

**Public Body Involved:** Department of Health and Social Services

**Sections of the Act Applied:** Section 3(1), Section 3(b.1), Section 4, Section 32, Section 33, Section 34

**Outcome:** Recommendation not accepted.

The Applicant sought copies of internal communications in relation to racism and cultural bias in the health system as well as the results and findings of an external investigation into a specific individual's death. The Department took the position that the external report was a "critical incident investigation" done in accordance with Section 25.3 of the *Hospital Insurance and Health and Social Services Act* (HIHSSA) and was not, therefore, subject to an access to information request. The Department also refused to share the report with the Information and Privacy Commissioner for the purposes of the review.

The Department took the position that section 25.4(2) of HISSA prevented the disclosure of any information in a notification or report or any information gathered, recorded or produced by or for the purpose of investigating a critical incident to "any person" other than those specifically named in the section. This section, they argued, prohibited the disclosure of the report to the Information and Privacy Commissioner as well as to the Applicant.

The IPC found that, because the onus of establishing that an applicant has no right to access to a record, they must establish that the record met the definition of the material described in section 35.4(2) of HISSA. The Department provided nothing other than their opinion that this was so, despite several

attempts on the part of the IPC to obtain additional information about the record. The Department did not, therefore, meet the onus of establishing that the Applicant was not entitled to the record and the IPC therefore felt there was no option but to recommend that the records be disclosed in full.

### Review Report 19-208

**Category of Review:** Access to Information

**Public Body Involved:** Department of Finance

**Sections of the Act Applied:** Section 15(a), Section 33

**Outcome:** Recommendations not accepted

This request for information involved a large number of records which were withheld pursuant to section 15(c) which provides public bodies with the discretion to refuse to disclose "information that is subject to any type of privilege available at law, including solicitor-client privilege". The IPC, as part of the review process, requested the confidential production of the records for which privilege was claimed so that she could properly analyze and assess the Department's claim of privilege. The Department, through its counsel, refused to produce the records for the Commissioner's review or to provide adequate affidavit evidence to support their claim.

Because the Department refused to provide the records to the IPC for assessment, that assessment had to be made on the basis of other evidence available. She reviewed the law with respect to solicitor-client privilege and applied that law to the evidence submitted by the Department for the purposes of the review. She found that the Department had not provided sufficient justification for its solicitor-client privilege claim. As a result, the public body had



not met the onus of establishing that the Applicant had no right to access to the records in question and the IPC therefore recommended that the records be disclosed in full.

The IPC also noted the government's failure to provide the records for her review jeopardizes the timely and cost-effective resolution of disputes and risks the government failing to make its case for privilege, when a review by the IPC of the disputed records could have led to a different outcome.



The effective functioning of the system of independent review that the Legislature has established in the Act to a material degree depends on my Office being able to appropriately review disputed records. This is also true where solicitor client privilege is claimed. My ability to independently and efficiently verify the government's assertion of privilege maintains public trust and confidence in access to information in the Northwest Territories.

Review Report 19-208

### Review Report 19-209

**Category of Review:** Access to Information - Deemed Refusal

**Public Body Involved:** Department of Finance

**Sections of the Act Applied:** Section 7, Section 8, Section 11,

**Outcome:** Recommendations acknowledged but not clearly accepted

The Applicant made a request for information from the Department of Finance on January 11<sup>th</sup>, 2018. On February 6<sup>th</sup>, the Department advised the Applicant that, because of a large volume of

records at issue (approximately 375 pages) the time for responding to the request was being extended to March 11<sup>th</sup> pursuant to section 11(b) of the Act. On March 6<sup>th</sup>, the Applicant contacted the public body to inquire as to the status of the matter, and again on March 19<sup>th</sup>. On April 3<sup>rd</sup>, the Applicant received a call from a new ATIPP Coordinator who indicated that the request would take an additional "week or two". On May 14<sup>th</sup>, the Applicant again contacted the public body for an update. He made three additional attempts to obtain an update during the month of May. Having still received no response by June 28<sup>th</sup>, 2018, the Applicant sought a review based on deemed refusal. The response to the Applicant's request was finally provided on July 19<sup>th</sup>, 2018.

The IPC found that the Department failed to respond to the request for information within 30 days of the request, or within the extended time frame taken by the public body pursuant to section 11 resulting in a "deemed refusal". She further found that the extension of time taken was not justified in that 375 pages of records could not, by any definition, be considered to be a "large volume" of records such that disclosure within the initial 30 day time frame would have "unreasonably interfered" with the department's operations.


The IPC made recommendations with respect to process and training for ATIPP Coordinators in the Department, and the review and development of policies and procedures.

## THE DISCONTINUANCE



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Clerk's stamp:



COURT FILE NUMBER:

1903 00779

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE:

Edmonton

APPLICANT:

THE GOVERNMENT OF THE NORTHWEST TERRITORIES

RESPONDENTS:

DONALD MACDOUGALL also known as DONN MACDOUGALL

DOCUMENT:


DISCONTINUANCE OF PROCEEDING

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PERSON FILING THIS DOCUMENT:

Sharon Roberts  
Field LLP  
Barristers and Solicitors  
2500, 10175 - 101 Street NW  
Edmonton, AB T5J 0H3  
Ph: (780) 423-3003 Fax: (780) 428-9329  
File No. 38301-12

The Applicant hereby discontinues the within proceedings as against the Respondent.

FIELD LLP



Per: \_\_\_\_\_

SHARON ROBERTS  
Counsel for the Applicant,  
The Government of the Northwest Territories

13413347-1



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## **PRE-LITIGATION I**



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## MY STORY

I've been the victim of an Information Breach

After leaving my employment with the Government of the Northwest Territories I learned that my former email was active and continuing to be monitored. I learned this after receiving a text from a former employee of mine who had received some good news following a history of personal and health concerns.

---

■ here ... Cancer free - big floppy hats and year round 30spf !!  
Beers on me next I see either of you! Haha! Donn I didn't know  
you actually left legal registries !!!! (Gary just got a vommitt email )  
Here is to new beginnings galore!!

---

You see, my former employee had sent an email to my former work email giving me good news regarding a recent cancer scare.

This person received no auto-reply or any other messaging to notify her that I was no longer at the Government of the Northwest Territories.

Instead, this person followed this email up with a phone call to my former office and she was shocked to discover that my former email was being monitored by my former




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**PRE-LITIGATION II**



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Government of  
Northwest Territories

Gouvernement des  
Territoires du Nord-Ouest

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Phone: (867) 767-9257 ext. [REDACTED]  
Fax: (867) 873-0234  
E-mail: [REDACTED]@gov.nt.ca

December 20, 2018

Donn MacDougall  
26 Edward Way  
St. Albert, AB  
T8N 6T4

**ATTENTION: Unlawful dissemination of personal information by website  
www.infobreach.ca**

Dear Mr. MacDougall:

We are solicitors for the Government of the Northwest Territories. Be advised the website, [www.infobreach.ca](http://www.infobreach.ca), is currently disseminating the personal information of several Government of the Northwest Territories' ("GNWT") employees without their consent. We have reason to believe that you are responsible for this dissemination and serious breach of those employees' privacy.

The GNWT demands that you cease and desist any further dissemination of the personal information and immediately shut down the Website. If you fail to shut down the Website by 5pm on December 21, 2018, the GNWT will pursue any and all legal remedies available to it.

We look forward to your prompt compliance,

[REDACTED]

[REDACTED]  
Legal Counsel  
Government of the Northwest Territories

P.O. Box 1320, Yellowknife, NT X1A 2L9

[www.gov.nt.ca](http://www.gov.nt.ca)

C. P. 1320, Yellowknife, NT X1A 2L9



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## **PRE-LITIGATION III**



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infobreach.ca - HTTP 451

https://www.infobreach.ca

# HTTP 451:

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# THIS IS CENSORSHIP

Quis custodiet  
ipsos custodes?



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## **THE EPILOGUE**



Decide for yourself:  
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www.infobreach.cc

MY STORY EMAIL BREACH PEOPLESOFT BREACH IPC COMPLAINT CARBON COPY

## INFORMATION BREACH AT THE GNWT

How (NOT) to respond to an information breach

This is a carbon copy (cc) of infobreach.ca 2018 - with redactions

### MY STORY

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