



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report A-2024-048

October 29, 2024

City of St. John's

### Summary:

The Complainant made an access to information request for the total amount of legal fees and disbursements paid by the City of St. John's to external counsel to conduct two hearings. The City provided the Complainant with copies of relevant legal invoices but redacted some information, including the aggregate amount of legal fees and disbursements for each invoice, pursuant to section 30(1) (legal advice) of the **Access to Information and Protection of Privacy Act, 2015**. The Commissioner found that the City was entitled to withhold this information under section 30(1).

### Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 9 and 30(1).

### Authorities Relied On: [Maranda v. Richer, 2003 SCC 67](#).

[Newfoundland and Labrador \(Information and Privacy Commissioner\) v. College of the North Atlantic, 2013 CanLII 83886 \(NL SC\)](#).

[Newfoundland and Labrador Legal Aid Commission \(Re\), 2019 NLSC 17](#).

NL OIPC Reports [A-2024-033](#); [A-2020-027](#); [A-2021-023](#); and [A-2024-045](#).

## BACKGROUND

- [1] The Complainant filed an access to information request under the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015) with the City of St. John's requesting the total amount of legal fees and disbursements the City paid to external counsel retained for two legal actions between the City and a numbered company the Complainant represents.
- [2] The legal actions for which the responsive records relate involves a dispute between the City and a company over a development agreement. The Complainant represented the company at both hearings. The litigation was highly publicized locally and the development agreement is one of several agreements that form part of a complex multi-purpose development. There are currently a number of active development agreements in place for the same multi-purpose development and the Complainant is representing the same company in a legal dispute with the City with respect to one of these agreements.
- [3] In its final response, the City provided the Complainant with 22 pages of responsive records that included seven invoices to the City from outside counsel with significant portions redacted pursuant to section 30(1) (legal advice), including the aggregate amount of legal fees and disbursements for each invoice. Each invoice provided to the Complainant included the date of the invoice, the date range for the legal services rendered, the subject matter of the legal work, a number assigned the Client and Matter, and other clerical information.
- [4] The Complainant filed a complaint with our Office requesting the City release the total amount of legal fees and disbursements paid to external counsel in relation to the two legal actions.
- [5] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of ATIPPA, 2015.

## PUBLIC BODY'S POSITION

[6] The City provided our Office with the responsive records in full and maintained that the invoices, including aggregate amounts must be redacted to maintain solicitor-client privilege. The City asserted there are numerous reports from this Office supporting this position, The City cited [Report A-2024-033](#) as the most recent report supporting their position, as well as [Maranda v. Richer](#) from the Supreme Court of Canada.

## COMPLAINANT'S POSITION

[7] The Complainant put forward three “principles” in support of their position: the distinction in the nature of the information; precedent and jurisprudence; and public interest and transparency.

[8] The Complainant asserted that the Supreme Court of Canada has consistently recognized that the disclosure of aggregate financial information, such as the total amount of legal fees, does not constitute a breach of solicitor-client privilege. Additionally, in similar cases, courts have ruled that detailed invoices may be privileged but the total cost of the services do not fall under the exemption. The Complainant also submitted that when balancing public interest and solicitor-client privilege, courts have repeatedly ruled that the onus is on the public body to justify withholding information under privilege, that the threshold for meeting this justification is high, and the City has not met the onus. However, no case law in support of these positions was cited by the Complainant.

[9] The Complainant also maintained that the public interest in ensuring transparency of public expenditures, particularly in relation to ongoing legal matters involving significant development projects, outweighs any claim of privilege in this context.

## ISSUES

[10] The issues for this Report to address are whether solicitor-client privilege protects the aggregate amount paid for legal services allowing the City to apply section 30 of ATIPPA, 2015

in this matter and whether section 9 of ATIPPA, 2015 should override the section 30 exception in this matter.

## DECISION

### Section 30(1)(a) (Legal Advice)

[11] Section 30(1) of ATIPPA, 2015 sets out,

30(1) The head of a public body may refuse to disclose to an applicant information

(a) that is subject to solicitor and client privilege or litigation privilege of a public body,

[12] In [Maranda v. Richer](#), the Supreme Court of Canada considered the scope of solicitor-client privilege and found there is a presumption that solicitor-client privilege protects legal invoices, including the total amount paid for legal services. This privilege can be rebutted; but it is not a low threshold and the party claiming that solicitor-client privilege does not apply is the party that bears the onus of rebutting the presumption. The Honourable Justice Lebel stated at paragraph 33:

33. . . . Because of the difficulties inherent in determining the extent to which the information contained in lawyers' bills of account is neutral information, and the importance of the constitutional values that disclosing it would endanger, recognizing a presumption that such information falls prima facie within the privileged category will better ensure that the objectives of this time-honoured privilege are achieved. That presumption is also more consistent with the aim of keeping impairments of solicitor-client privilege to a minimum, which this Court forcefully stated even more recently in *McClure*, supra, at paras. 4-5.

[13] In [Newfoundland and Labrador \(Information and Privacy Commissioner\) v. College of the North Atlantic](#), the Supreme Court of Newfoundland and Labrador followed *Maranda* and held that information contained in legal invoices is presumptively subject to solicitor-client privilege and the onus is on the applicant to provide any contextual factors that could rebut the presumption. Additionally, the court found that disclosing the total amount of legal fees in the context of ongoing litigation created significant risk that an assiduous inquirer could draw

inferences about the communications between a client and counsel concerning the conduct of the ongoing litigation. Chief Justice Orsborn, as he then was, stated at paragraphs 41-44:

[41] The information requested, particularly the amounts spent, both as to amount and as to timing, could be used by a diligent and persistent inquirer armed with the public court record to make inferences about the level of effort by CONA in defending the claim and in dealing with various aspects of the litigation as they arise from time to time. Such level of effort, as reflected by the amounts charged for legal services could reasonably be considered as being based on instructions and communications from the client, in this case CONA.

[42] It is at least possible that an assiduous inquirer could infer from the level and timing of expenditures whether CONA has instructed its solicitor to expend efforts in resolving the matter before trial or alternatively, if on the eve of trial, in preparing for trial.

[43] Disclosing information on expenditures for legal services during the litigation for which the services were or are being provided poses a serious risk to the confidentiality that must attach to the communications between solicitor and client during those proceedings. The fair conduct of litigation, while it relies on full disclosure of the substantive factual elements of the claim and dispute, also relies on the ongoing ability of the client to discuss confidentially with his or her solicitor matters such as resolution strategy, trial strategy, assessment of the case and the many other issues on which advice may be sought during litigation.

[44] There is at least a possibility that disclosure for amounts paid for legal services could, in this context, reveal something of the confidential communications that are essential during litigation. This possibility cannot be negated by any level of redaction. Even aggregating the total amount invoiced for services may allow the diligent inquirer to make inferences about CONA's instructions to its solicitors; the simple expedient of making a similar request every month would lead to a greater possibility of making such inferences.

[14] The notion that the presumption is not rebutted when legal matters are ongoing was upheld in [Newfoundland and Labrador Legal Aid Commission \(Re\)](#). In that case the court found there is a presumption that solicitor-client privilege applied to legal invoices for the retention of private counsel in legal aid matters and the presumption was not rebutted in cases where representation was ongoing and had not been finally concluded. This Office adopted that position in Report [A-2020-027](#) where the Complainant sought legal invoices submitted by private counsel retained by Memorial University.

[15] In Report [A-2021-023](#), this Office stated that courts have noted that the presumption is not rebutted particularly when the matters are ongoing and also when the applicant is familiar with the matters to which the legal invoices relate. In that Report, the Complainant was clearly aware of the nature of the legal work being performed on behalf of the public body and given the Complainant's relationship with the public body and the Complainant's knowledge of the issues the public body had in relation to the access to information requests, this Office found that the presumption was not rebutted.

[16] In Report [A-2024-033](#), this Office accepted that the City of St. John's had established that solicitor-client privilege protected legal invoices, including the aggregate amount that the City paid for legal services, for litigation that had concluded. As in previous reports and cases, this Office restated that although the presumption is rebuttable, it is not a low threshold and the burden of proof to rebut the presumption falls on the Complainant. In that case a number of factors were weighed to determine whether or not the presumption was not rebutted, such as a single identifiable client, specific proceedings for the legal invoices, and the status of the legal proceedings.

[17] In contrast to these past reports, in a recent Report this Office accepted the complainant had rebutted the presumption that section 30(1) applied to legal fees. [Report A-2024-045](#) involved a request to the Department of Justice and Public Safety for legal bills and costs related to criminal proceedings that had been stayed by the Crown. In that case, unlike the one at issue in this report, the prosecutions were over, and there were multiple criminal proceedings for which information was sought.

[18] Based on the case law and reports from this Office, the following factors favour withholding the information in the context of this case:

- there is a presumption of solicitor-client privilege to legal invoices, including aggregate amounts;
- there is a single, identifiable client (the City of St. John's);
- there has been public information about the particular litigation in question in the media;
- the City of St. John's has already provided the Complainant with date ranges of when it sought legal advice for the litigation;

- the legal invoices requested relate to two hearings for a specific legal matter, not just for legal fees in general;
- the Complainant is familiar with the legal work performed on behalf of the City of St. John's as the Complainant acted on behalf of the opposing party in both proceedings;
- there are currently 15 active development agreements forming part of the complex multi-purpose development, with the anticipation of further agreements between the party the Complainant represents and the City of St. John's; and
- there are ongoing legal proceedings between the City of St. John's and the same company in relation to the development agreements that form part of the same complex multi-purpose development as in this case and the Complainant is acting on behalf of the same party,

[19] Based on the case law and reports from this Office, the following factors favour releasing the information:

- the two specific legal matters to which the invoices belong are no longer ongoing; and
- the legal invoices include fees for non-related matters, so it could be difficult to discern which fees applied to which matter.

[20] Applying the relevant case law and previous reports, there are more factors in support of withholding the information.

### **Section 9 (Public Interest)**

[21] Section 9(1) of ATIPPA, 2015 sets out,

9(1) Where the head of a public body may refuse to disclose information to an applicant under a provision listed in subsection (2), that discretionary exception shall not apply where it is clearly demonstrated that the public interest in disclosure of the information outweighs the reason for the exception.

[22] This section applies to legal advice pursuant to section 9(2)(c) where a complainant clearly demonstrates the public interest in disclosure of the information outweighs the reason for the exception.

[23] We have considered the contextual factors of these particular records in conjunction with the public interest override at section 9. While we agree with the Complainant that there is an inherent public interest in ensuring transparency of public expenditures, we do not agree that

the public interest is enhanced where there is ongoing legal matters involving a significant development project that is related to the litigation at issue in this Report. In actuality, this is a factor weighing in favour of the legal fees being protected by solicitor-client privilege.

[24] When the public interest in disclosing the legal fees is weighed against the purpose of the exception, the threshold to override solicitor-client privilege has not been met.

## RECOMMENDATIONS

[25] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015), I recommend that the City of St. John's maintain its position on this matter.

[26] As set out in section 49(1)(b) of ATIPPA, 2015, the head of the City of St. John's must give written notice of his or her decision with respect to these recommendations to the Commissioner and any person who was sent a copy of this Report within 10 business days of receiving this Report.

[27] Dated at St. John's, in the Province of Newfoundland and Labrador, this 29<sup>th</sup> day of October 2024.



Jacqueline Lake Kavanagh  
Information and Privacy Commissioner (Acting)  
Newfoundland and Labrador