Memorial University
Submission to
Access to Information and Protection of Privacy Act, 2015
Statutory Review Committee
November 27, 2020

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EXECUTIVE SUMMARY

Summary of Recommendations

1. Memorial University recommends that the definition of Personal Information in *ATIPPA, 2015* be amended to protect, as personal information of the author, "correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence."

Memorial University further recommends an amendment in the definition of Personal Information to clarify that the individual's personal views or opinions about another person that are provided in relation to workplace conduct are not the personal information of the person complained about except where relevant to a workplace investigation.

2. Memorial University recommends that a revision or clarification of s.100 of the legislation reflect the current unofficial process in which the OIPC accepts a listing of solicitor-client and/or litigation privileged information and/or records with submission, in lieu of the privileged records themselves and, therefore, is unable to compel production of solicitor-client and litigation privileged information and/or records.

3. Memorial University recommends that an amendment to section 33 provide that records pertaining to a workplace investigation be withheld until *after the investigator's report has been issued.*

4. Memorial University recommends a limit on the number of concurrent requests made by the same applicant.

5. Memorial University recommends

- the restoration of an application fee
- amendment of s. 25.(3) to permit charges for certain types of activities
- clarification in s.26 that the Commissioner's decision under s. 26 is final and cannot be the subject of a further Complaint to the Commissioner or appeal to Court under s. 55.

6. Memorial University recommends that the *ATIPPA*, *2015 s*hould be amended to permit a public body to refuse to provide records where there is evidence that the applicant already has them in their possession.

7. Memorial University recommends that Section 21 be amended to provide better oversight of abuses of the legislation and to give remedial effect to that purpose.

GAPS IN THE LEGISLATION / OVERSIGHT CONCERNS

8. Memorial University recommends

- Section 48 be amended to clarify that the Commissioner should distinguish between Soft and Hard Recommendations in his reports.
- Section 49(3) be amended to clarify that notice of the right of appeal in a public body's decision letter is only required where the Recommendation in question is regarding the granting or refusing of access to the record or part of the record; or, not to make a requested correction to personal information.

9. Memorial University recommends to

i. Amend the legislation to clearly delineate that there is a statutory deadline for compliance with the Commissioner's recommendations.

ii. Extend the number of business days that a public body has to comply with the Commissioner's

recommendation to at least 20 business days.

10. Memorial University recommends

i. That the legislation be amended to clarify that a de novo hearing shall proceed as an expedited hearing on the basis of affidavit evidence subject to further application to the Court for additional steps under Rule 17A.09.

ii. That the first appearance date shall proceed as a case management meeting at which the parties are to discuss any applications contemplated under Rule 17A.09 and scheduling deadlines.

iii. That further recourse to the *Rules of the Supreme Court, 1986* be prohibited absent an order of the Court under Rule 17A.09 (as contemplated by the application provision of the *Rules of the Supreme Court, 1986* in Rule 1.02).

iv. That all *ATIPPA, 2015* appeals be case managed, with the first date serving as the first case management meeting.

v. That a public body be required to file an audit copy of the records under seal with the Court without the necessity of a sealing application.

I. INTRODUCTION

As Newfoundland and Labrador's only university, Memorial has a special obligation to the people of this province. Established as a memorial to the Newfoundlanders who lost their lives in active service during the First and Second World Wars, Memorial University draws inspiration from these shattering sacrifices of the past as we help to build a better future for our province, our country and our world.

We are a multi-campus, multi-disciplinary, public, teaching/research university committed to excellence in everything we do. We strive to have national and global impact, while fulfilling our social mandate to provide access to university education for the people of the province and to contribute to the social, cultural, scientific and economic development of Newfoundland and Labrador and beyond.

Memorial has more than 19,000 students who can avail of more than 300 program options spread across 5 campuses and more than 90,000 alumni active throughout the world. From local endeavours to research projects of international scope, Memorial's impact is felt far and wide. As one of the top 20 research universities in Canada, Memorial has more than 30 research centres and received more than $130 million in research funding in 2019-20.

For more information, see http://www.mun.ca/memorial/about/

The public rightly requires transparency and accountability of Memorial University. Memorial recognizes its role as a public institution and its important obligation to govern itself in the public trust. The guiding principle of the university's information request policy (established in 2010) is:

> *Memorial University of Newfoundland, as a public institution, is committed to openness, accountability and transparency in all of its activities. Questions arising from and information sought about Memorial University's activities will be met with forthright and timely responses. Most information about the university's operations is considered public information and is made easily accessible on the Internet. The university is guided by and bound by federal and provincial laws regulating access to information and protection of privacy.*

Following proclamation of the *Access to Information and Protection of Privacy Act (ATIPPA)* in 2005, the university established an Information Access and Privacy (IAP) Office, led by the University Access and Privacy Advisor. Its mandate is to develop and implement policy, procedures and best practices in information access and privacy protection; to conduct privacy impact assessments of projects and programs to identify privacy risks and recommend measures to mitigate those risks; to provide strategic and day-to-day advice to the university on all matters pertaining to access and privacy; to manage ATIPP requests, and; to deliver access and privacy training to the university community.

The university's privacy policy was established in 2008 and its guiding principle states:

Memorial University is entrusted with the personal information of its students, employees, alumni, donors, research participants, retirees and others and is committed to excellence in its management of this information.

II. APPLICATION TO HIGHER EDUCATION

We note the university is not an agency of the government and its autonomy is recognized in the *Memorial University Act,* which states that "(n)otwithstanding paragraph 2(1)(a) of the *Auditor General Act,* the university is not an agency of the Crown for the purpose of that *Act* or any other purpose" (*Memorial University Act,* RSNL 1990 CHAPTER M-7, sub-section 38.1 (2)).

In accordance with the *Memorial University Act*, university governance is bicameral and divided between the Board of Regents and the Senate. The Board of Regents has responsibility for management, administration and control of the property, revenue, business and affairs of the university and the Senate has responsibility for academic matters. This division of responsibilities is very common in universities. In respect of the administrative activities at Memorial University, Memorial is much the same as any public body administering the *ATIPPA, 2015*. In respect of academic matters, however, the *ATIPPA, 2015's* application to a higher education body presents challenges.

The legislation does not effectively account for the principles of autonomy, academic freedom and collegial decision-making that are embedded in the institution. The *ATIPPA, 2015* is designed primarily for government bodies where employees' work is deemed to be directed by the public body's leadership. However, a great deal of work undertaken in academic and research activity is not directed by the university's executive. For example, research is curiosity driven and conceived of and carried out by individual researchers, must of it as studies. Similarly, while the university's Senate approves courses, instructors determine themselves how best to deliver their teaching. As well, much work carried out by instructors is outside professional work that is not directed by the university executive.

Academic freedom is a fundamental principle and privilege of academics. Fully described in Article 2 of Memorial's collective agreement with the Memorial University of Newfoundland Faculty Association, two points merit highlighting:

> *2.03 Therefore, the Parties agree to uphold the right of ASMs to teach, to learn, to carry out research, to publish, to comment, to criticize, to acquire and disseminate knowledge, to create, and to perform; all of these without deference to prescribed doctrine.*
>
> *2.04 Academic freedom includes the right to discuss and criticize policies and actions of the University and the Association and protects against the imposition of any penalty by either Party for exercising that right.*

We highlight the above to draw your attention to the distinction between personal information and 'work product.' Many courts and tribunals have considered this distinction. Although not a

defined term in the *ATIPPA, 2015,* work product is covered in two provisions in the *ATIPPA* that illustrate its intended application to environments that presume its employees are acting as its agents and not independently of the employer:

- 40(2)(f)

  This provision states that disclosure of information about an employee's position, functions and salary range is not an unreasonable invasion of the employee's privacy. The "position" and "functions" aspects of this provision are equated to "work product." It concerns the extent to which records produced by or about an employee relate to the employee's "functions" and are not, therefore, the employee's personal information.

- 40(2)(h)

  This provision states that disclosure of an opinion of an employee or other third party given in the course of performing services for a public body is not an unreasonable invasion of the employee's privacy. This provision assumes that opinions produced by employees of a public body in the course of performing services for their employer are not their personal information and are, instead, part of their "work product."

The *ATIPPA, 2015* effectively assigns accountability for actions of its employees to the public body. At Memorial University, however, the governance structure and collegial decision-making in academic matters (including academic policy, academic program reviews, peer review, course offerings, and pedagogy) mean that many decisions pertaining to academic matters are not directed by the university's president (the public body head under the *ATIPPA, 2015*) nor by administrators. For example, academic program regulations are governed by the Senate. In addition to regulating the conduct of its meetings and determining degrees awarded and to whom, the Senate's powers under the *Memorial University Act* include:

- determine the conditions of matriculation and entrance, the standing to be allowed students entering the university and all related matters;
- receive, consider and determine proposals or recommendations of a faculty council or other body as to courses of study and all related matters;
- regulate instruction and to determine the methods and limits of instruction;
- determine the conditions on which candidates shall be received for examination, to appoint examiners and to determine the conduct of all examinations;
- prepare the calendar of the university for publication;
- appoint committees that it considers necessary and to confer upon the committees power and authority act for the senate in and in relation to matters which the Senate considers expedient and to appoint other committees that the Senate considers expedient to act in an advisory capacity; and,
- exercise disciplinary jurisdiction with respect to students in attendance at the university, by way of appeal from a decision of the faculty council.

University governance can be described as collaborative governance in which power is shared and balanced between governing bodies. It is a unique form of accountability derived from the tenets of autonomy, independence, academic freedom and governing in the public trust.

Collegial decision-making is the basis of decision-making about academic matters and cannot function without faculty participation.

Similarly, in accordance with long-standing practice, many of the records generated by faculty in the course of conducting research, developing teaching materials and creating knowledge through publication and presentation are not in the custody and control of the university.

In a 2011 report from the information and privacy commissioner of Ontario concerning a university's custody and control of records held by members of the university's faculty association (APUO), the commissioner noted:

> *The significant conclusions I have reached in this regard are:*
>
> 1. *records or portions of records in the possession of an APUO member that relate to personal matters or activities that are wholly unrelated to the university's mandate, are not in the university's custody or control;*
>
> 2. *records relating to teaching or research are likely to be impacted by academic freedom, and would only be in the university's custody and/or control if they would be accessible to it by custom or practice, taking academic freedom into account;*
>
> 3. *administrative records are* prima facie *in the university's custody and control, but would not be if they are unavailable to the university by custom or practice, taking academic freedom into account.*
>
> Final Order PO-3009-F of the Information and Privacy Commissioner, Ontario
> Available at: http://www.ipc.on.ca/images/Findings/PO-3009-F.pdf

To summarize, administration of the *ATIPPA, 2015* at Memorial University contends with complexities that derive from its unique governance structure and, as well, the important principles of autonomy and academic freedom that, as concluded in the report by the Ontario commissioner in respect of an Ontario university, impact on Memorial's custody and control of records held by its academic staff members.

We, therefore, ask you to consider all of the above in light of the recommendations that follow. The first recommendation pertains to the definition of personal information; two recommendations relate to exceptions to disclosure; the next four pertain to process matters; and the final recommendation pertains to oversight. To provide context as you review our submission, Appendix A contains a listing of all ATIPP requests received by Memorial University since 1 November 2019 (modified, as appropriate, to protect the identity of applicants.) Figure 1 below demonstrates the volume of ATIPP requests, OIPC complaint investigations and ATIPP-related court cases since 2017.

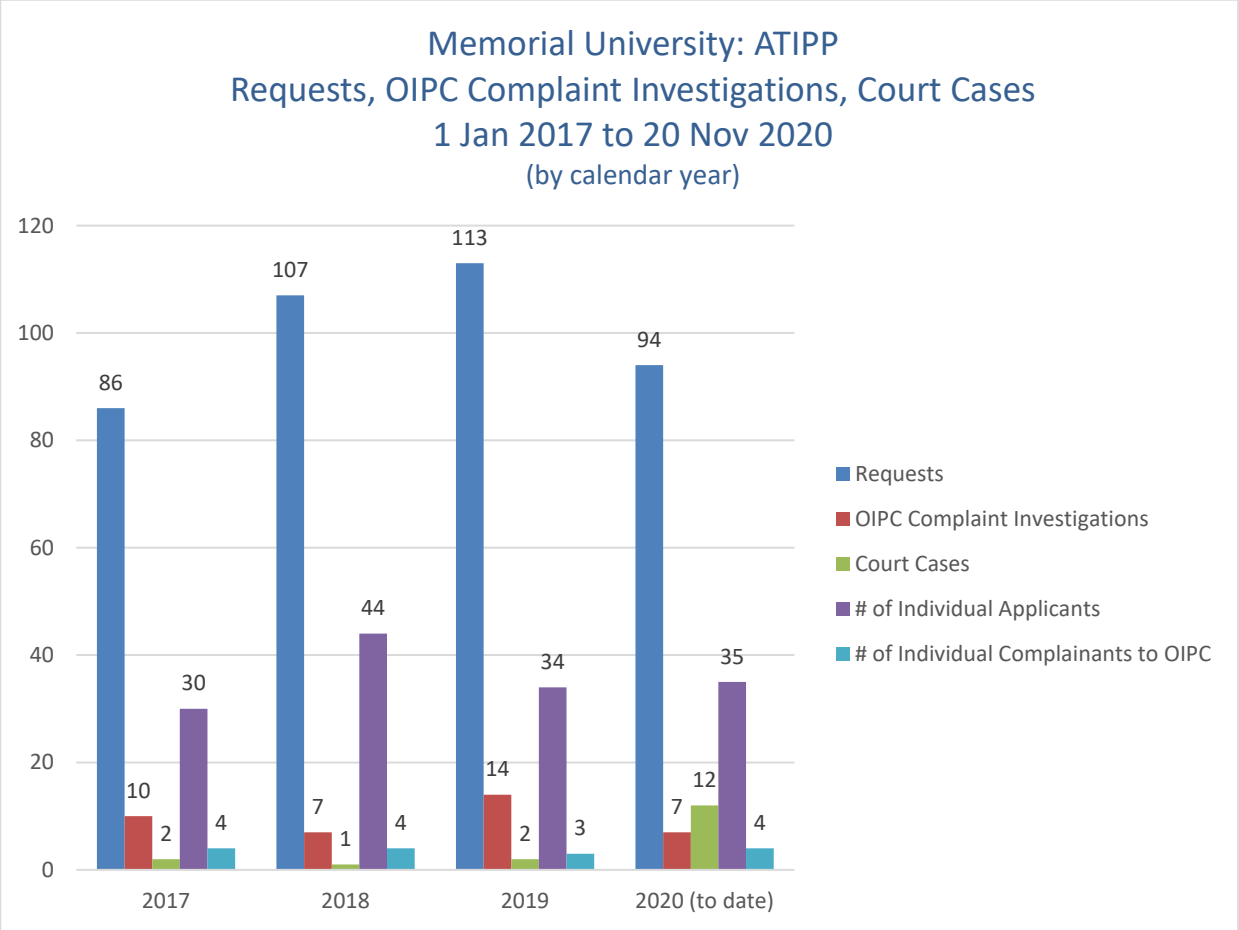
Memorial University: ATIPP
Requests, OIPC Complaint Investigations, Court Cases
1 Jan 2017 to 20 Nov 2020
(by calendar year)
120
100
80
60
40
20
0
86
10
2
30
4
107
7
1
44
4
113
14
2
34
3
94
7
12
35
4
2017
2018
2019
2020 (to date)
Requests
OIPC Complaint Investigations
Court Cases
# of Individual Applicants
# of Individual Complainants to OIPC

Figure 1

III. RECOMMENDATIONS

Recommendation 1: Definition of Personal Information

Our Justification

Memorial University has experienced several ATIPP requests and OIPC access complaint investigations in which the definition of personal information dealing with opinions has been problematic. The definition states, in part:

> *"personal information" means recorded information about an identifiable individual, including*
> *(viii) the opinions of a person about the individual, and*
> *(ix) the individual's personal views or opinions, except where they are about someone else;*

The *Act* provides significant protection for personal information. However, the definition excludes protection for some types of opinions and views that one might, as a principle of justice and fairness, expect to be protected. The definition of "personal information" includes opinions of another person about the individual. Logically, of course, this part of the definition would, and does, apply to public employees' personal views or opinions about another person in the course of employment. Say, for example, a public employee expresses an opinion about a person who is applying for a benefit. Clearly, this ought to be the personal information of the person applying for the benefit.

However, the principle is problematic when the person expressing the opinion is not doing so in their capacity as a public employee or is doing so in an inherently personal capacity, or in a context where discretion and confidentiality are expected. For example, consider the case of an employee who emails their supervisor or meets with their supervisor regarding questionable behaviour of another employee. The employee may simply be seeking advice or guidance, may not want to make a formal complaint, and may expect that the information they share about their co-worker will be kept confidential. However, under the current definition of "personal information," the email or any meeting notes arising from that interaction may have to be disclosed to the employee with questionable behaviour if he or she files a personal information request. Such disclosure could cause stress and humiliation to the employee who brought the issue forward, all because this "opinion" will be considered the applicant's personal information and not the personal information of the person who provided it.

Memorial processed an ATIPP request in which one of the responsive records was an email in which Faculty Member A confidentially expressed personal feelings and views of herself that were tangentially connected to Faculty Member B, the ATIPP applicant. When the applicant filed a complaint with the OIPC, the OIPC took the position that the information was not the personal information of Faculty Member A but instead was Faculty Member B's personal information. The OIPC recommended releasing this information to the applicant. Faculty Member A's views could be afforded no protection under s. 40 because they were not, pursuant to the OIPC's interpretation, personal information of Faculty Member A.

These examples illustrate an inconsistency between the protection of personal information under the *Act* and its definition. The protection of personal information under the *Act*, represents a codification of the recognition that "information about a person ... is in a fundamental way his own, for him to communicate

or retain for himself as he sees fit".[1] The Supreme Court of Canada explained in *R v Dyment* as follows:

> *Finally, there is privacy in relation to information. This too is based on the notion of the dignity and integrity of the individual. As the Task Force put it (p. 13): "This notion of privacy derives from the assumption that all information about a person is in a fundamental way his own, for him to communicate or retain for himself as he sees fit." In modern society, especially, retention of information about oneself is extremely important. We may, for one reason or another, wish or be compelled to reveal such information, but situations abound where the reasonable expectations of the individual that the information shall remain confidential to the persons to whom, and restricted to the purposes for which it is divulged, must be protected. Governments at all levels have in recent years recognized this and have devised rules and regulations to restrict the uses of information collected by them to those for which it was obtained; see, for example, the Privacy Act, S.C. 1980-81-82-83, c. 111.*[2]

The protection is for a privacy interest which "connotes concepts of intimacy, identity, dignity and integrity of the individual."[3] However, in practice, what the above examples illustrate is that Employee A can express her intimate thoughts and fears to a supervisor, which thoughts and fears connote concepts of intimacy, dignity and her personal integrity, but because they arise in a context involving Employee B, they are – as the Commissioner sees it – not her personal information but Employee B's. This is notwithstanding the fact that the information in question in no way relates to the dignity or integrity of Employee B. In other words, the privacy interest that is intended to be protected is in fact diminished, because of a problem with the definition of "personal information."

The proviso that a person's personal views or opinions about someone else's are the other person's personal information finds its footing in a 2007 report from the Information and Privacy Commissioner. At that time, the legislation indicated that personal information included the opinions of a person about the individual and the individual's personal views or opinions. The result was that Person A's personal opinion about Person B was the personal information of both Person A and Person B. At issue was a request by an individual for harassment complaints made about him. The Commissioner noted the ambiguity in the legislation and resolved it in favour of the individual complained about.[4]

The legislation was subsequently amended to reflect its current wording. However, in 2015, the legislation was amended again, and this time section 33 was incorporated. Section 33 provides a party to a workplace investigation access to all relevant material created or gathered for the purposes of the workplace investigation. The Commissioner takes the view that a party's right of access in section 33 trumps all other exceptions to disclosure. Therefore, according to the Commissioner's interpretation, any personal views or opinions expressed about a party to a workplace investigation (for example, arising from a harassment complaint) would be disclosed to the party, without reliance on the definition of "personal information." As a result, the mischief that the amendment in the definition was intended to guard against has, in part, been remedied by another section in the legislation.

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[1] *R v Dyment* (SCC page 429)
[2] *R v Dyment,* [1988] 2 SCR 417 at para 22.
[3] 2006 CarswellNat 1277 at para 54.
[4] Report 2007-001.

Leaving the definition of personal information as it currently stands has a chilling effect for those individuals who seek assistance in relation to workplace conduct, and who choose not to formalize a complaint. Based on its current application, the most intimate thoughts of persons who seek guidance from, for instance, a sexual harassment advisor, will be subject to disclosure to the very individuals he or she fears. As a result, Memorial University asks that a policy decision be made, which recognizes that the privacy interest in such conversations belong to the individuals having them – not the persons who may be tangentially the subject.

The definition is also problematic insofar as it captures opinions or views of persons who are not public body employees, or are provided to the university on an unsolicited basis.

In one ATIPP request to the university, an applicant made a personal information request for all records regarding himself and a third party. However, neither of these individuals was a public body employee and each had an expectation of privacy. Nevertheless, on investigating, the OIPC was of the opinion that the views expressed by the third party ought to be released to the applicant because they did not constitute the third party's personal information. On this basis, the third party would not have a right of notice under s.19, or opportunity to give consent, or any of the protections afforded under s.40.

Similarly, unsolicited correspondence to the university containing personal views or opinions of a member of the public about a university member merits, at a minimum, consideration under s.19 (third party notice) and under s.40 (protection of personal information). But based on the definition of Personal Information, the unsolicited opinion would belong to the person the opinion is about. The member of the public, while having an expectation of privacy, would be entitled to none.

Paragraph (ix) in the definition of personal information does not restrict itself to public employees' opinions. It applies to opinions of any person, regardless of context, and even unsolicited opinions.[5] Ontario's *Freedom of Information and Protection of Privacy Act* deals with this conundrum by adding the following to its definition of personal information:

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

[5] This issue arises also in the statutory review of the federal *Privacy Act* currently under way by the Government of Canada. See under Clarifying Concepts (page 9) of Modernizing Canada's Privacy Act: Online Public Consultation, available at https://www.justice.gc.ca/eng/csj-sjc/pa-lprp/dp-dd/raa-rar.html

Recommendation #1
Memorial University recommends that the definition of Personal Information in *ATIPPA, 2015* be amended to protect, as personal information of the author, "correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence."

Memorial University further recommends an amendment in the definition of Personal Information to clarify that the individual's personal views or opinions about another person that are provided in relation to workplace conduct are not the personal information of the person complained about except where relevant to a workplace investigation.

Recommendation 2: Exception to Disclosure – Legal Advice

Our Justification

It is the position of Memorial University that the Office of the Information and Privacy Commissioner (the "OIPC") cannot compel production of solicitor-client and litigation privileged records that are protected by s. 30, in the course of an investigation into an access complaint.

In support of this position, Memorial University relies upon two decisions: *Information and Privacy Commissioner* v. *University of Calgary*, 2016 SCC 53, and *Lizotte v Aviva Insurance Company of Canada,* 2016 SCC 52.

In the University of Calgary case, the Supreme Court of Canada imposed limitations on the powers of the Alberta Information and Privacy Commissioner to review solicitor-client privileged records. In that case, s. 56(3) of the legislation provided that the Commissioner could compel production of records despite "any privilege of the law of evidence." The Supreme Court of Canada ruled that solicitor-client privilege is not a "privilege under the law of evidence", but rather a substantive, stand-alone privilege. The court stated:

> *The expression "any privilege of the law of evidence" does not require a public body to produce to the Commissioner documents over which solicitor-client privilege is claimed. Solicitor-client privilege is no longer merely a privilege of the law of evidence, but a substantive right that is fundamental to the proper functioning of our legal system. The disclosure of documents pursuant to a statutorily established access to information regime, separate from a judicial proceeding, engages solicitor-client privilege in its substantive, rather than evidentiary, context. To give effect to solicitor-client privilege as a fundamental policy of the law, legislative language purporting to abrogate it, set it aside or infringe it must be interpreted restrictively and must demonstrate a clear and unambiguous legislative intent to do so. Section 56(3) does not meet this standard and therefore fails to evince clear and unambiguous legislative intent to set aside solicitor-client privilege. This interpretive approach is not a renunciation of the modern approach to statutory interpretation, but recognizes legislative respect for fundamental values.*

Section 97(3) of the *ATIPPA, 2015,* empowers the Commissioner with the authority to compel production of records relevant to an investigation. Section 97(1)(d) provides that the section applies to a record "notwithstanding a privilege under the law of evidence." It is the same language as the Alberta legislation

considered by the Supreme Court. The OIPC nonetheless has indicated that they believe they have the right to compel production of privileged records for inspection. We acknowledge that Alberta's *Freedom of Information and Protection of Privacy Act* lacks a provision equivalent to s. 100(2) of the *ATIPPA, 2015.* Section 100(2) provides that privilege is not affected by production to the Commissioner. However, section 100(2) does not demonstrate a clear legislative intention to abrogate solicitor-client privilege. As the Supreme Court stated, any legislative language purporting to abrogate, set aside or infringe solicitor-client privilege must be interpreted restrictively. Section 100(2), interpreted restrictively, is simply an acknowledgement that where a person or public body chooses to provide such information to the Commissioner, it does not lose its privilege.

A similar result was reached by the Supreme Court with respect to litigation privilege in *Lizotte.* At issue in that case was whether an insurance Syndic could compel production of records under the *Act Respecting the Distribution of Financial Products and Services*. The Supreme Court concluded that it could not. While the Court did not describe litigation privilege as a "substantive right" like solicitor-client privilege, it nonetheless touched on its elevated status, and indicated that the same requirements are needed to abrogate litigation privilege as are needed to abrogate solicitor-client privilege. The Court stated:

> *[64] There is of course no question that litigation privilege does not have the same status as solicitor-client privilege and that the former is less absolute than the latter. It is also clear that these two privileges, even though they may sometimes apply to the same documents, are conceptually distinct. Nonetheless, like solicitor-client privilege, litigation privilege is "fundamental to the proper functioning of our legal system" (Blood Tribe, at para. 9). It is central to the adversarial system that Quebec shares with the other provinces. As a number of courts have already pointed out, the Canadian justice system promotes the search for truth by allowing the parties to put their best cases before the court, thereby enabling the court to reach a decision with the best information possible: Penetanguishene Mental Health Centre v. Ontario, 2010 ONCA 197, 260 O.A.C. 125, at para. 39; Slocan Forest Products Ltd. v. Trapper Enterprises Ltd., 2010 BCSC 1494, 100 C.P.C. (6th) 70, at para. 15. The parties' ability to confidently develop strategies knowing that they cannot be compelled to disclose them is essential to the effectiveness of this process. In Quebec, as in the rest of the country, litigation privilege is therefore inextricably linked to certain founding values and is of fundamental importance. That is a sufficient basis for concluding that litigation privilege, like solicitor-client privilege, cannot be abrogated by inference and that clear, explicit and unequivocal language is required in order to lift it.*

It is our view that the reasoning of the Supreme Court in protecting the importance of solicitor-client and litigation privilege should be considered in the review of *ATIPPA, 2015*. Clear and unambiguous language should be included to state that the Commissioner is not entitled to compel records or information that is protected by solicitor-client or litigation privilege. In making this submission, Memorial University would ask that the Commissioner's role be taken into consideration. Over the past three years, the majority of requests that involved solicitor-client and/or litigation privileged records at the university pertained to ongoing ATIPP-related disputes. Production of those records to the Commissioner in the context of their role as a decision-maker, and party to ATIPP Appeals, would be fundamentally unjust.

Our Recommendation

Over the course of many complaint investigations with the University, some of which have resulted in the issuance of a formal report (e.g. A-2020-008, A-2020-017), the OIPC has continuously accepted a description or listing of solicitor-client and/or litigation privileged information with submissions as to why such information is privileged, in lieu of production of the privileged records themselves. We recommend a revision or clarification of the legislation to reflect this, currently, unofficial process.

Although the OIPC does not agree that a public body has the right to withhold information from production that is solicitor-client or litigation privileged, it is our view that production to the OIPC of a listing or description of this information/records upholds the paramount confidentiality protections awarded to a valid claim of privilege while also upholding the University's obligation of accountability and transparency, as per the spirit of the *ATIPPA, 2015*.

Recommendation #2

Memorial University recommends that a revision or clarification of s.100 of the legislation reflect the current unofficial process in which the OIPC accepts a listing of solicitor-client and/or litigation privileged information and/or records with submission, in lieu of the privileged records themselves and, therefore, is unable to compel production of solicitor-client and litigation privileged information and/or records.

Recommendation 3: Exceptions to Access – S.33 Workplace Investigations

Our Justification

Memorial has received and processed a number of requests pursuant to section 33 of the *ATIPPA, 2015*. Section 33 is somewhat unique in Canada:

> ***33.*** *(1) For the purpose of this section*
>
> *(a) "harassment" means comments or conduct which are abusive, offensive, demeaning or vexatious that are known, or ought reasonably to be known, to be unwelcome and which may be intended or unintended;*
>
> *(b) "party" means a complainant, respondent or a witness who provided a statement to an investigator conducting a workplace investigation; and*
>
> *(c) "workplace investigation" means an investigation related to*
>
> *(i) the conduct of an employee in the workplace,*
>
> *(ii) harassment, or*
>
> *(iii) events related to the interaction of an employee in the public body's workplace with another employee or a member of the public*
>
> *which may give rise to progressive discipline or corrective action by the public body employer.*
>
> *(2) The head of a public body shall refuse to disclose to an applicant all relevant information created or gathered for the purpose of a workplace investigation.*
>
> *(3) The head of a public body shall disclose to an applicant who is a party to a workplace investigation the information referred to in subsection (2).*
>
> *(4) Notwithstanding subsection (3), where a party referred to in that subsection is a witness in*

a workplace investigation, the head of a public body shall disclose only the information referred to in subsection (2) which relates to the witness' statements provided in the course of the investigation.

From our significant experience with ATIPP requests pertaining to workplace investigations, a shortcoming of the *ATIPPA, 2015* has been observed, specifically the lack of a time limitation placed on disclosure prior to the investigator's report being issued. Therefore, a party to a workplace investigation can request all records relating to the investigation, including from the other party and the investigator, before the investigator has even concluded their investigation and produced their report. Not only does this render consideration of what records are "relevant" to the investigation cumbersome, but it challenges the integrity of an investigation and places unnecessary stress on the other party and the investigator as they are trying to conduct their work. A relationship between the parties is already strained by the time an investigation is reached, and submitting an ATIPP request requiring the other party to compile and provide all records relating to the investigation before the matter has been completed adds further strain on an already tense situation. It can also serve to antagonize the other party to the investigation, to the detriment of the investigation and ultimately the workplace relationship. A workplace investigation, by default, provides a communication channel via the investigator for evidence to be presented and shared and for the parties to respond accordingly. Processing an ATIPP request about an investigation, while at the same time conducting that investigation, is not an efficient use of resources and, more to the point, may frustrate the aims of the investigation. Workplace investigations conducted under relevant University policies are designed to ensure they meet legal standards of procedural fairness and natural justice and the parties to an investigation have an opportunity to respond to an investigation report upon receiving it.

Our Recommendation

Memorial submits that disclosure of records under section 33 should await the conclusion of the investigation and issuance of the investigator's report. Amending the legislation to prevent disclosure prior to an investigator's report being issued is in the interest of the parties to a workplace investigation, the investigator and the employer, and also would serve to support more efficient use of public body resources.

Recommendation #3:
Memorial University recommends that an amendment to section 33 provide that records pertaining to a workplace investigation be withheld until *after the investigator's report has been issued.*

Recommendation 4: Limit on Concurrent Access Requests from the Same Applicant

Our Justification

The current statute contains no limitations on the number of access requests an individual may make to a public body at the same time. As such, it is not uncommon for Memorial University to receive multiple concurrent access requests from the same ATIPP applicant, which are at times for similar or related records.

The absence of a restriction on the number of allowable concurrent requests presents several operational challenges for the University, primarily in our ability to meet statutory deadlines in collecting and

processing records.

Furthermore, the absence of a provision to limit multiple concurrent requests enables individuals to make regular systematic requests, or requests otherwise made in bad faith, which ultimately amounts to an abuse of process of the legislation. The university has direct experience of managing multiple systematic requests from the same applicant.

Our Recommendation

In an effort to mitigate a potential abuse of process and to ensure the efficient and timely processing of access requests, we recommend that the legislation be revised to limit the total number of concurrent access requests an individual may make.

We note that pursuant to subsections 44(7) and 74(4) of the *ATIPPA, 2015*, concurrent access and privacy complaints by the same applicant in excess of five may be held in abeyance until the Commissioner has responded to one of the maximum allowable complaints. It is reasonable that the public body should have the same protection against multiple concurrent requests as the Commissioner.

Recommendation #4
Memorial University recommends a limit on the number of concurrent requests made by the same applicant.

Recommendation 5: Fee Considerations

Our Justification #1

Section 25

The *ATIPPA, 2015* is unique in Canada in connection with fees for ATIPP requests. All other Canadian jurisdictions charge an application fee. We believe an application fee for making an ATIPP request should be restored. An application fee lends *gravitas* to an applicant's decision to file a request for access to public body records and ensures that applicants consider carefully the nature of their request and the decision to file an ATIPP request, rather than seeking the information through other informal channels. Ultimately, the fee may help to reduce poorly-considered, repetitive, vexatious or frivolous requests.

Memorial University submits further that s. 25 (3) of the *ATIPPA, 2015* should be amended to include expanded grounds on which an applicant may be charged fees connected with processing access requests. At this time, fees can be charged only for "locating" records (see the Guidance published by the OIPC in this connection: https://www.oipc.nl.ca/pdfs/CostEstimates.pdf). As a result, in contrast with the previous ATIPP legislation, under *ATIPPA, 2015* Memorial University rarely issues fee estimates for ATIPP requests. In particular, we submit that a public body should have the opportunity to charge fees not only for locating a record but also for the services of identifying, retrieving and compiling records. This challenge is highlighted, in particular, in connection with requests for information located in databases. Such requests are dealt with under ss. 20(2) and (3). However, we wish to note that providing information from databases is not an automatic exercise. Requests are rarely, if ever, straightforward and rarely for reports that are regularly and ordinarily produced from a database for internal operational purposes. Instead, such requests often require multiple senior analysts to develop custom queries for multiple databases in order to assemble the precise information sought in an ATIPP request. That information must then be

studied for verification and reconciliation. While ss. 20(2) and (3) do helpfully state that such requests need be answered only if they can be answered using the public body's normal hardware, software and expertise and doing so would not unreasonably interfere with operations, that is not the complete answer to the issue. In practice, neither the ATIPP coordinator nor the analyst(s) involved will have insight into what challenges retrieving the information might present. By the time the complexity and resources required are determined, the analysts and experts have already invested hours of time and the public body does not wish to advise the applicant that their request cannot be accommodated.

The processing of an ATIPP request at Memorial University involves a multi-faceted response as requests frequently require the IAP Office to engage with offices and units University-wide in the search and location of responsive records. Searches for records are conducted by employees who are familiar with the records requested, as per ss. 11(2)(b). From a procedural standpoint, upon receipt of an access request, the IAP Office sends the wording of the request, along with guidance on how to conduct a search for records and a "Locating Records Worksheet" to employees who will administer a search for records. These employees are asked to provide an estimate of the time they anticipate it will take to locate records responsive to the request.

The provision of an estimate of search time by employees who will carry out the search is a crucial component in the processing of an ATIPP request, as it provides insight to the IAP Office on the total number of hours expected to locate records and, in turn, whether an Estimate of Costs to an applicant is warranted.

The "Locating Records Worksheet", on the other hand, is to be completed once a search for records has been fully executed and the records submitted to the IAP Office for processing and redaction. The Worksheet indicates the total time taken to locate responsive records, as well the time spent in identifying, retrieving, reviewing, photocopying and scanning the records. This process assists the university in monitoring resources expended in complying with ATIPP requests.

What we have come to learn is that the bulk of the time spent by employees conducting searches for records pertains not to the locating of records but to the "other" aspects of responding. This is due, in large part, to the speed at which an electronic search can be executed. While a quick key word search to "locate" records may take only minutes, it can take employees countless hours to identify, review, extract, scan, copy and internally review records that have been "located" as a result of a key word search. Many of the records located as a result of the key word search may not even be relevant to the request. Non-responsive records must be vetted by those conducting the search before responsive records are sent to the IAP Office and, as is often the case, the responsive records provided to the IAP Office are further analyzed and vetted by the IAP Office. Effectively, the *ATIPPA, 2015*'s provision for 15 hours of free time locating records before a Cost Estimate can be considered does not take into account modern electronic storage of information.

While operationally the University continues to rely to some degree on the use of paper records, the majority of communications and the transfer and sharing of documents are executed by way of electronic means.

Physical searches, although less frequent, can require exorbitant hours of employee time and resources,

as in addition to the physical search itself, these same "other" aspects of the search must be completed prior to submission of the records to the IAP Office.

For these reasons, we recommend the legislation restore an application fee and broaden the basis on which an estimate of costs may be considered by including time taken by employees in fully executing records searches and the time required to extract and assemble accurate information from databases.

We make this recommendation not to deter an applicant's right to request access to information, but to encourage applicants to make their requests thoughtfully and to limit the constraints on the offices and units within the public body that are required to allocate, on occasion, substantial time and resources to fully execute records searches and assemble records in response to requests.

Our Recommendation

Restore an application fee and amend ss. 25(3) to permit charges for certain types of activities.

Our Justification #2

Section 26

Pursuant to s. 26, upon the issuance of an Estimate of Costs to an applicant, the applicant is provided four options: accept the fee, modify the request, withdraw the request, or ask for a waiver of fees. The applicant has a full 20 business days to consider and respond to the Estimate, including to apply to the Commissioner to revise the Estimate. The powers of the Commissioner in connection with Fee Estimates are contained entirely in s. 26(7) and (8). Subsection 26(9) states that a public body shall comply with a decision of the Commissioner under this Section. Furthermore, ss. 42(8)(d) states that a Fee Estimate shall not be the subject of a Complaint to the Commissioner. In recognition that the Commissioner's decision under s. 26 is final, the *ATIPPA*, *2015* further states in s. 55 that an estimate of costs or a decision not to waive a cost under s. 26 cannot be appealed to Court.

Notwithstanding the above, the Commissioner did recently undertake a Complaint investigation about a fee that was paid by an applicant to Memorial University. Despite representations by Memorial that the applicant paid the fees, the request was processed and that a Complaint about it could not be undertaken pursuant to s.26 and s.42, the Commissioner did investigate. See Report A-2019-032, available at https://www.oipc.nl.ca/pdfs/A-2019-032.pdf. In the Report, on the subject of its jurisdiction to investigate a complaint about fees, the Commissioner stated, "there is some ambiguity in the Act." Memorial submits there is no ambiguity in the Act. However, as the Commissioner has suggested there is, Memorial submits that any perceived ambiguity should be resolved and asks you to consider the following perspective.

By granting a full 20-business day period for an applicant to consider a Cost Estimate and to also ask for a review of the Cost Estimate by the OIPC, the intent of the legislation is for s. 26 to dispense with all issues, including OIPC reviews. The legislature clearly intended that once a Cost Estimate is accepted, modified, or revised by the Commissioner under s. 26, the matter is final and, at that stage, a public body may proceed to process a request.

Our Recommendation

Clarify in s. 26 that the Commissioner's decision under s. 26 is final and cannot be subject of a Complaint under s. 42 or appeal to Court under s. 55.

Recommendation #5

Memorial University recommends

- the restoration of an application fee
- amendment of s. 25.(3) to permit charges for certain types of activities
- clarification in s.26 that the Commissioner's decision under s. 26 is final and cannot be the subject of a further Complaint to the Commissioner or appeal to Court under s. 55.

Recommendation 6: Record(s) already possessed by an Applicant

Our Justification

Two of the *ATIPPA, 2015*'s purposes are:

1. Ensuring that citizens have the information required to participate meaningfully in the democratic process, and;
2. Increasing transparency in government and public bodies so that elected officials, officers and employees of public bodies remain accountable.

Providing record(s) that an applicant already possesses is redundant, wasteful and does not further the purposes of the legislation. The applicant already has the records to participate meaningfully in the democratic process and to increase transparency in government and public bodies. Submitting an access to information request to a public body for these same records does not achieve these purposes and is not in the public interest. It wastes valuable public body resources, particularly in times of budget constraints, and can diminish the legitimate access rights of others.

Applicants requesting records they already possess have proven to be a vexatious problem for Memorial, whether it be for emails they already received, emails they generated, emails they were copied on, or for other materials they submitted to the University. Memorial has had requests for emails that were sent to the applicant by Memorial employees, emails that they were copied on and, indeed, emails they authored.

This also presents an issue when applicants file numerous requests to the same department in respect of a particular project. When records were provided by the department to the ATIPP coordinator, it was apparent the applicant already possessed some of the records. However, in accordance with the *ATIPPA, 2015* whether or not the applicant already has them, they must be provided to the applicant. Indeed, the university has had experiences where the OIPC, in undertaking a complaint investigation under s.42 has conceded that the complainant has the records but nevertheless insisted that Memorial provide them to the complainant-applicant.

Processing records an applicant already possesses via an ATIPP request erodes the importance and value of the *ATIPPA, 2015*. This is particularly evident in a personal information request where employees searching for records must know the name of the applicant in order to locate records containing the applicant's personal information. There have been many instances where the individuals conducting the search know for certain the applicant already possesses the records, whether that be through their

employment or because they were sent or copied on emails. Offices that must provide these same records question why it must be done, express how vexatious it is, and sometimes question the value of the *ATIPPA, 2015* as they experience it being used as a form of nuisance or harassment. When individuals are already experiencing a high workload in their own office duties, having to search for and provide records which they know the applicant already has, appears senseless and is exhausting, as it requires them to carve out time in their already busy schedule to conduct this work. This erodes the confidence of employees of public bodies in what should be a valuable and critically important tool for transparency.

Our Recommendation

Memorial submits the *ATIPPA*, *2015 s*hould be amended to permit a public body to refuse to provide records where there is evidence that the applicant already has them in their possession.

Recommendation #6:
Memorial University recommends that the *ATIPPA*, *2015 s*hould be amended to permit a public body to refuse to provide records where there is evidence that the applicant already has them in their possession.

Recommendation 7: Preventing Abuse of the *ATIPPA, 2015*: Disregarding a Request

Our Justification

The public's right to access information held by public bodies plays an important role in promoting democracy. However, as recognized by section 21 of the *ATIPPA*, 2015, the right of access presents an opportunity for abuse. It can, and does, take various forms, including where the applicant attempts to dictate the process, or act as a management surrogate; when requests are filed for an an improper objective such as harassing a public body or its employees; and when requests are used as a weapon against a public body, or to commit what the jurisprudence refers to as information warfare. Such abuse of the right of access has serious consequences. The misuse of the legislation brings the Act into disrepute and "can threaten or diminish the legitimate exercise of that same right by others." It "also harms the public interest, since it unnecessarily adds to the public body's costs of complying with the Act."[6] Unfortunately, Memorial University has had experiences with vexatious applicants and both of these consequences.

In Memorial's experience, the legislation has been used as, amongst other things, a form of bullying and harassment. This has manifested itself as years of targeted requests, numerous applications to the Office of the Information and Privacy Commissioner for approval to disregard abusive requests, to which approval was granted in most cases, and a plethora of Court actions. The result is that some members of the public body now question the legitimate exercise of the right of access by others. Maintaining cooperation from public body employees is essential to ensure statutory obligations are upheld. Memorial University has noted a dramatic increase in the amount of resources needed, both financially and in terms of human resources, to respond to frivolous and vexatious requests and consequent complaints and appeals. Increased safeguards are warranted.

Abuse of the legislation is currently guarded against by section 21 of the *Act*. It states:

[6] Decision 99-01 as cited in 2002 BCIPCD No 57 at p. 7.

21. (1) The head of a public body may, not later than 5 business days after receiving a request, apply to the commissioner for approval to disregard the request where the head is of the opinion that

(a) the request would unreasonably interfere with the operations of the public body;

(b) the request is for information already provided to the applicant; or

(c) the request would amount to an abuse of the right to make a request because it is

(i) trivial, frivolous or vexatious,

(ii) unduly repetitive or systematic,

(iii) excessively broad or incomprehensible, or

(iv) otherwise made in bad faith.

(2) The commissioner shall, without delay and in any event not later than 3 business days after receiving an application, decide to approve or disapprove the application.

(3) The time to make an application and receive a decision from the commissioner does not suspend the period of time referred to in subsection 16 (1).

(4) Where the commissioner does not approve the application, the head of the public body shall respond to the request in the manner required by this Act.

(5) Where the commissioner approves the application, the head of a public body who refuses to give access to a record or correct personal information under this section shall notify the person who made the request.

(6) The notice shall contain the following information:

(a) that the request is refused because the head of the public body is of the opinion that the request falls under subsection (1) and of the reasons for the refusal;

(b) that the commissioner has approved the decision of the head of a public body to disregard the request; and

(c) that the person who made the request may appeal the decision of the head of the public body to the Trial Division under subsection 52 (1).

Memorial University is respectfully of the view that this section is ill-equipped to adequately guard against abuse of the legislation and, in particular, repetitive abuse.

The Problems with Section 21

(a) The Time-Frame for Determining Whether a Request is Abusive: Section 21(1)

The time-frame for filing an application to disregard in subsection 21(1) is prohibitive. In many cases, either because of the wording of the request and/or input needed from employees who possess records, an ATIPP coordinator may not appreciate the vexatious or frivolous nature, bad faith, or interference that underscores an access to information request until after the deadline for filing has passed. A longer time-frame for determining whether a request is an abuse of the legislation is warranted for the following reasons:

i. Requests have become larger, more complex and in some cases excessively broad. Members of the public are increasingly informed about access to information legislation and their right to request records held by public bodies. This is a great success of the *ATIPPA, 2015*. However, as individuals are increasingly engaged, so too are the depth and scope of the topics on which they seek information. As

a result, a public body often requires significant time to review a large, complex and/or excessively broad request to determine whether it is reasonable to process or whether, after efforts to focus and scope the request with an applicant have failed, the public body must proceed with preparing a disregard submission. The 5 business day timeline to disregard a request does not reflect this trend of larger and more complex requests filed by applicants. It also does not give time for the public body to attempt to scope an overly broad or unclear request prior to making a decision about applying to the Commissioner to disregard the request.

ii. The level of effort required to assess reasonableness of a request. To truly understand the scope of a request, the ATIPP coordinator must contact the department(s) and/or individual(s) who would need to conduct the search for records to discuss what the request is seeking. This is particularly true for Memorial, which is a large, multi-campus university community that includes students, faculty, staff, researchers and alumni. New and innovative initiatives and activities regularly happen at the university and these prompt ATIPP requests, requiring the ATIPP coordinator to obtain background information from applicable units and individuals in order to understand the scope of the request, determine whether the records are within the custody and control of the university, possibly seek legal advice, and determine the reasonableness of the request under s.21. The 5-business-day timeline to seek authorization to disregard a request does not provide adequate time for this level of effort.

iii. The necessity to disregard a request is not evident until records are reviewed. Many employees, when receiving notification that they must search and provide records for an ATIPP request, will gather all of the records and submit them to the ATIPP coordinator. They may not be inclined to question whether the request should be disregarded. In most cases, it is not until the ATIPP coordinator reviews the records that it becomes evident that a disregard submission should have occurred, but by the time the records are provided and reviewed the deadline has often passed. One of the grounds on which a request may be disregarded is ss. 21(1)(b): the request is for information already provided to the applicant. Again, the records must be reviewed to determine if some or all of them have already been provided to the applicant. This leaves a public body to complete a request which ought to have been disregarded on the basis of one or several of the grounds in section 21. Consequently, other ATIPP requests are impacted and not responded to as quickly.

iv. The level of effort required to prepare an application to disregard. A disregard application requires significant effort. The University Access and Privacy Advisor must first analyze the request in light of the statutory grounds to request a disregard, then prepare a draft submission and conduct necessary internal, and sometimes external, consultations prior to submitting. This all has to occur within 5 business days. To persuade the Commissioner a disregard is warranted, the application to disregard usually must cover all applicable grounds. When a disregard application is determined to be necessary, all other access and privacy work must essentially cease in order to allow time to be able to analyze the request in light of the enumerated grounds, draft a submission, conduct research into case law, review prior OIPC reports, and conduct consultations on the submission. Furthermore, both internal and external legal counsel often need to be consulted on account of ATIPP requests pertaining to litigation or disputes. Submissions must be approved by senior administration. The 5-business-day timeline does not reflect the sheer amount of effort required by a public body to prepare, draft, conduct research, consult and finalize a formal disregard submission for the Information and Privacy Commissioner.

(b) *The Time-Frame for Responding to the Request: Section 21(3)*

The requirement imposed by subsection 21(3) to complete the request within the original deadline in the event that the application to disregard is unsuccessful is also problematic. Subsection 21(3) requires a public body to continue to process the request, e.g., collect responsive records, while preparing an application to disregard and awaiting a decision from the Information and Privacy Commissioner. This is onerous, and it means that the harm that a public body seeks to avoid by an application to disregard is still incurred. For example, if the legislation is being used as a form of harassment, requiring those employees who feel harassed to nevertheless search for records in the interim period enables the harassment. It also can be perceived as callous and, like all forms of abuse, undermines respect for the legislation and the importance of the right of access.

(c) *An Absence of Procedural Fairness*

Under section 21(2), the Information and Privacy Commissioner has three days to make a decision on an application to disregard. There is no opportunity for an access to information applicant to make submissions on the application. Nor does the Commissioner have an opportunity to complete an investigation or render a report on its findings. Its decision is not shared with the applicant, nor is it made public. The public body receives a decision on its application to disregard. If the disregard is approved, the public body must then inform the applicant. The applicant is given an opportunity to appeal – but not the decision of the Commissioner, as that is not shared with the applicant, pursuant to s.41(c). The applicant has to appeal the decision of the public body to disregard, without ever having seen the public body's submissions to the Commissioner or the Commissioner's decision. As a result, there is a lack of procedural fairness, transparency in the process and reportable decisions which could provide precedents and guidance on the abuse and appropriate use of the *ATIPPA, 2015*. With these limitations is an increased propensity for disregard decisions to be appealed to Court under subsection 21(6)(c), thereby increasing the costs to the public body.

(d) *The Absence of Effective Remedial Authority*

Subsections 21(1), (4) and (5) refer to "the request." This has been interpreted by the Information and Privacy Commissioner as a limitation on his remedial authority, specifically that he can only address individual requests on a case-by-case basis. This limitation fails to remediate repetitive abuses of the legislation and the harms outlined above. The authority to craft a remedy that is proportionate to the harm conducted and the mischief that the section seeks to guard against, and should guard against, is notably absent.

(e) *The Right of Appeal & the Process*

Under section 21(4) of the current legislation, a public body is required to respond to an access to information request where the Information and Privacy Commissioner does not approve an application to disregard. There is no provision for the public body to advance its case to the Supreme Court of Newfoundland and Labrador if it disagrees with the Commissioner's decision. This limitation fails to take into account the conflict between the dual role of the Commissioner as an advocate for access pursuant to sections 3(1)(f)(a), and as a quasi-decision-maker under the legislation. It serves as a

barrier to access to justice for a public body. The public body ought to be afforded the same right as an applicant to be able to advance its case to the Supreme Court if necessary.

Additionally problematic is the role of the Information and Privacy Commissioner, or lack thereof, on an appeal of a decision to disregard. Under subsection 56(4)(a) the Commissioner is not permitted to intervene as a party to an appeal in respect of a decision to disregard a request. The consequence is that the entity tasked with independent oversight of the legislation is not permitted to make submissions to the Court on what constitutes an abuse of its legislation, even though it has already provided a written decision on the exact issue to the public body. While the Commissioner is not a typical decision-making body due to its advocacy for access role and its quasi-order making power / recommendation-making power, this limitation on the Commissioner's ability to provide input and assistance to the Court is out of step with jurisprudence where the Court seeks to exercise its inherent jurisdiction to prevent abuses of subordinate legislation.

Our Recommendations

There is currently inefficient oversight of abuses of the *ATIPPA, 2015*. Section 21 should be amended to better prevent abuses of the legislation and to give remedial effect to that purpose. In this respect, Memorial University recommends that:

(i) Newfoundland and Labrador adopt the approach used in the Province of Ontario, where a public body can disregard a request that is an abuse of the legislation without approval from the Information and Privacy Commissioner. This would have the effect of precluding harm that is currently sustained while an application is prepared and a decision is pending on an application to disregard, and should be considered in combination with recommendation (ii).

(ii) An applicant ought to be permitted to complain to the Information and Privacy Commissioner about, or appeal directly to the Supreme Court about, a public body's decision to disregard a request. The Commissioner should have an opportunity to investigate and prepare a Report. The Report should be provided to both the public body and the applicant, and there should be an opportunity for either party to appeal a Report of the Information and Privacy Commissioner to the Supreme Court. This would enhance procedural fairness and transparency, provide precedents and education on the abuse and the proper uses of the *ATIPPA, 2015*, and provide the public body with an opportunity to appeal a decision of the Commissioner regarding abuse of the legislation. It would also bring the review process for disregards, in line with the review / appeal process that otherwise applies under the current regime.

(iii) The Information and Privacy Commissioner and the Supreme Court of Newfoundland and Labrador ought to have the remedial authority to craft a remedy that is necessary to rectify and prevent the harm caused by abuse of the legislation, such as placing restrictions on an applicant's ability to file requests, and declaring someone a vexatious applicant for abuse of the legislation through any of the statutorily enumerated forms of abuse.

(iv) In addition to the foregoing, there should be a separate and independent provision enabling a public body to apply to both the Information and Privacy Commissioner or the Supreme Court of Newfoundland and Labrador to have someone declared a vexatious applicant for abuse of the

legislation. This would preclude the necessity of an applicant filing a complaint or appeal regarding a disregard, in order for a public body to advance a declaration application on its own merit.

(v) The Information and Privacy Commissioner ought to have a right of intervention on an appeal to Court regarding a decision to disregard a request, or an application to Court to have someone declared a vexatious applicant.

Recommendation #7:
Memorial University recommends that Section 21 be amended to provide better oversight of abuses of the legislation and to give remedial effect to that purpose.

IV. GAPS IN THE LEGISLATION / OVERSIGHT CONCERNS

Several gaps in the legislation have become apparent since it was enacted in 2015.

Recommendation 8: Soft versus Hard Recommendations

Our Justification

There is a practical distinction between "soft" and "hard" recommendations that is not adequately addressed in the legislation. The *ATIPPA, 2015* does not delineate how these differing recommendations are to be addressed in the Commissioner's reports, nor in communications to applicants regarding their right of appeal. This gap ought to be addressed.

The basis for the distinction between "soft" and "hard" recommendations are set out in sections 47 to 51:

Section 47 outlines what the Information and Privacy Commissioner may recommend after completing an investigation. It states:

> *47. On completing an investigation, the commissioner may recommend that*
> *(a) the head of the public body grant or refuse access to the record or part of the record;*
> *(b) the head of the public body reconsider its decision to refuse access to the record or part of the record;*
> *(c) the head of the public body either make or not make the requested correction to personal information; and*
> *(d) other improvements for access to information be made within the public body.*

Section 48 requires the Commissioner to prepare a report, setting out "where appropriate, his or her recommendations and the reasons for those recommendations," and "information respecting the obligation of the head of the public body to notify the parties of the head's response to the recommendation of the Commissioner within 10 business days of receipt of the recommendation."

If a public body does not give written notice within the required time, then under section 49(2), it is considered to have agreed to comply with the recommendation(s) of the Commissioner.

Pursuant to subsections 50(1) and (2), if the public body does not agree, in whole or in part, with a recommendation to "grant the applicant access to the record or part of the record; or (b) make the requested correction to personal information," the public body must apply to the Supreme Court of Newfoundland and Labrador for a declaration.

Under subsections 51(1) and (2), where the public body is considered to have agreed with a recommendation under section 49(2) but fails to do so within 15 business days, or fails to apply for a declaration under section 50, the Commissioner may file an order with the Supreme Court, which must be limited to a direction to the public body either "(a) to grant the applicant access to the record or part of the record; or (b) to make the requested correction to personal information."

The combined effect of these sections means that recommendations that are not to grant an applicant access to the record or part of the record, or make a correction to personal information, cannot be subject to an Order filed by the Commissioner. They are also recommendations for which there is no right of appeal to the Supreme Court following a complaint to the Commissioner. Section 54 states:

> *54. An applicant or a third party may, not later than 10 business days after receipt of a decision of the head of the public body under section 49, commence an appeal in the Trial Division of the head's decision to*
> *(a) grant or refuse access to the record or part of the record; or*
> *(b) not make the requested correction to personal information.*

Recommendations that may be subject to a Commissioner's Order, an application for a Declaration, or an appeal under section 54 are "Hard Recommendations." Those that cannot be subject to a Commissioner's Order or an application for a Declaration are "Soft Recommendations."

The *ATIPPA, 2015* contains no provision specifying how a public body responds to a Soft Recommendation. Further, section 49 specifies that no later than 10 business days after receiving the Commissioner's recommendation, the public body must notify the Commissioner and any person who was sent a copy of the report, which notice must:

> *….include notice of the right*
> *(a) of an applicant or third party to appeal under section 54 to the Trial Division [General Division] and of the time limit for an appeal; or*
> *(b) of the Commissioner to file an order with the Trial Division [General Division] in one of the circumstances referred to in subsection 51(1).* (ss 49(3))

This section does not adequately delineate that the notice regarding the appeal provision ought only be provided with respect to Hard Recommendations. This has placed public bodies in the position of having to notify applicants of a right of appeal under section 54 where no such right exists, or to amend its notice with the clarification that while it is obligated to advise the applicant of section 54, there is no right of appeal in the circumstances. The Information and Privacy Commissioner has frowned upon the latter

approach. The former results in the filing of unnecessary appeals that are outside the legislative framework, resulting in increased costs to a public body.

Recommendation #8:
Memorial University recommends

- Section 48 be amended to clarify that the Commissioner should distinguish between Soft and Hard Recommendations in his reports.
- Section 49(3) be amended to clarify that notice of the right of appeal in a public body's decision letter is only required where the Recommendation in question is regarding the granting or refusing of access to the record or part of the record; or, not to make a requested correction to personal information.

Recommendation 9: A Deadline for Complying with the Commissioner's Recommendations

Our Justification

The *ATIPPA, 2015* does not provide clear guidance on whether there is a deadline for complying with recommendations of the Commissioner. This should be clarified.

Under section 49(1), the public body has 10 business days to decide whether to comply with the recommendations of the Commissioner, and to provide notice to a person who receives a copy of the report (which includes a complainant). As noted above, the public body is considered to have agreed to the Commissioner's recommendations if notice is not provided within the 10 business days allotted. Subsections 51(1) and (2) permit the Commissioner to file an Order with the Court in respect of Hard Recommendations where the public body "agrees or is considered to have agreed under section 49 to comply with a recommendation of the commissioner referred to in subsection 50(1) in whole or in part but fails to do within 15 business days after receipt of the commissioner's recommendation" or where the public body fails to apply for a declaration under section 50.

The combined effect of these sections is that a public body has 10 business days to decide whether to accept recommendations, and a further 5 days to comply, or it may become subject to an Order in Court. Arguably, this imposes a 15-business-day deadline for compliance from the date it receives the recommendations. However, this requirement is not clearly delineated as a deadline, with the potential for applicants to receive additional disclosure after its deadline for a further appeal has passed.

Furthermore, if the Commissioner is empowered to review the duty to assist and/or grant orders in respect of the duty to assist, there should be a longer time-frame for compliance. In this respect, Memorial University notes that a 15-business-day deadline to conduct additional searches and release additional records is less than the 20-business-day deadline imposed for the original ATIPP Request, notwithstanding that there are additional consultations required within a public body in order to determine whether to accept recommendations and before any additional searches can be undertaken and new records processed.

Recommendation #9:
Memorial University recommends to
i. Amend the legislation to clearly delineate that there is a statutory deadline for compliance with the Commissioner's recommendations.
ii. Extend the number of business days that a public body has to comply with the Commissioner's recommendation to at least 20 business days.

Recommendation 10: Application of the Rules of the Supreme Court, 1986 & the Appeal Process

Our Justification

Memorial University is currently party to 17 court actions arising under the *ATIPPA, 2015* (all with the same self-represented applicant). In the course of these actions, Memorial University has been served with notices of inspection, interrogatories, interlocutory applications, requests for lists of documents, and there has been reference to examination for discoveries and other similar procedures. This has increased the cost of complying with the legislation dramatically and, we believe, has also unnecessarily complicated proceedings that are meant to be expeditious. Clarification regarding the expedited nature of the *de novo* hearings under the *ATIPPA, 2015* is warranted. It will help to avoid an increased cost of compliance while ensuring timely access to information.

Section 57 of the *ATIPPA, 2015* provides that "the practice and procedure under the *Rules of the Supreme Court, 1986* providing for an expedited trial, or such adaption of those rules as the court or judge considers appropriate in the circumstances, shall apply to the appeal." At the same time, section 59 governs the conduct of the appeal. Section 59(1) states that the Court shall review the matter as a new matter "and may receive evidence by affidavit," while subsection (3) contemplates that the Court may accept evidence in private. It states:

> ***59.*** *(1) The Trial Division shall review the decision, act or failure to act of the head of a public body that relates to a request for access to a record or correction of personal information under this Act as a new matter and may receive evidence by affidavit.*
>
> *(2) The burden of proof in section 43 applies, with the necessary modifications, to an appeal.*
>
> *(3) In exercising its powers to order production of documents for examination, the Trial Division shall take reasonable precautions, including where appropriate, receiving representations without notice to another person, conducting hearings in private and examining records in private, to avoid disclosure of*
>
> *(a) any information or other material if the nature of the information or material could justify a refusal by a head of a public body to give access to a record or part of a record; or*
>
> *(b) the existence of information, where the head of a public body is authorized to refuse to confirm or deny that the information exists under subsection 17 (2).*

In practice, Memorial University has been obligated to file applications for sealing of records under section 59(3) where the Court is considering an appeal relating to redactions to records. Those applications have been contested in each of the *de novo* appeals included in the 17 matters referenced above.

The expedited trial rule states:

> *17A.09. (1) Notwithstanding that there may have been an application under rule 17.01, 17A.01, 40.03 or 40.04, the Court may, on application by any party where*
>
> *(a) the claim is for a liquidated sum not exceeding $15,000 excluding post-judgment interest and costs; or*
>
> *(b) in any other case where action under this rule can be taken without injustice to any other party,*
>
> *order the expedited trial of a proceeding or an issue in a proceeding, and may order that*
>
> *(c) certain facts described in the order are not in dispute;*
>
> *(d) pleadings be amended or closed within a fixed time;*
>
> *(e) interlocutory applications be brought within a fixed time;*
>
> *(f) procedures for examination for discovery be completed within a fixed time;*
>
> *(g) examination for discovery be dispensed with or limited in nature and scope;*
>
> *(h) other pre-trial applications or procedures be dispensed with or limited in nature and scope;*
>
> *(i) evidence be adduced by affidavit;*
>
> *(j) a party deliver a written summary of the proposed evidence of a witness within a fixed time;*
>
> *(k) the evidence in chief of a witness be given in whole or in part by the production of a written statement;*
>
> *(l) experts who have been retained by the parties meet, on a without prejudice basis, to determine those matters on which they agree and to identify those matters on which they do not agree;*
>
> *(m) a pre-trial conference be held at a time and date to be fixed, at which any of the orders in this rule may be made; and*
>
> *(n) a pre-trial conference be dispensed with and the proceeding be set down for trial on a trial list or, with the approval of the Chief Justice, set for trial on a particular date.*
>
> *(2) On an application under rule 17A.09(1) the court may make such other order as is just for the purpose of expediting the trial of a proceeding.*
>
> *(3) At the trial any facts ordered not to be in dispute shall be deemed to be established and the trial shall be conducted accordingly, unless the trial judge orders otherwise.*
>
> *(4) A judge may, before or at trial, vary or set aside an order made under rule 17A.09(1) or (2).*

Notably, Rule 17.09(1) contemplates an application to the Court for the purposes of proceeding on an expedited basis. Furthermore, it contemplates that the Court may order that evidence be provided by way of Affidavit under Rule 17.09(i) – a clear overlap with ss 59(1) of the *ATIPPA, 2015.*

Memorial University respectfully requests clarification of the process for a *de novo* hearing and the application of the *Rules of the Supreme Court, 1986.* In this respect, it asks that the legislation be amended to clarify that a *de novo* appeal shall proceed as an expedited trial on the basis of affidavit evidence, and that no further recourse to the *Rules of the Supreme Court, 1986* is permitted absent an application to the Supreme Court pursuant to Rule 17A.09. It would further recommend that a first appearance date

proceed by way of a case management meeting at which time the parties could discuss filing deadlines and applications that are contemplated under Rule 17A.09. Lastly, the ability to file a copy of the records in dispute with the Court under seal should not, in the context of access to information legislation, be contested or require an application. As a result, Memorial University recommends that the legislation require a public body to file an audit copy of the records under seal (an audit copy being a copy that delineates where redactions are applied but does not contain the redactions).

Recommendation #10:
Memorial University recommends

i. That the legislation be amended to clarify that a de novo hearing shall proceed as an expedited hearing on the basis of affidavit evidence subject to further application to the Court for additional steps under Rule 17A.09.

ii. That the first appearance date shall proceed as a case management meeting at which the parties are to discuss any applications contemplated under Rule 17A.09 and scheduling deadlines.

iii. That further recourse to the *Rules of the Supreme Court, 1986* be prohibited absent an order of the Court under Rule 17A.09 (as contemplated by the application provision of the *Rules of the Supreme Court, 1986* in Rule 1.02).

iv. That all *ATIPPA, 2015* appeals be case managed, with the first date serving as the first case management meeting.

v. That a public body be required to file an audit copy of the records under seal with the Court without the necessity of a sealing application.

APPENDIX A	
ATIPP Requests to Memorial University 1 November 2019 to 20 November 2020* *Anonymized	
1.	Copies of email between @ MUN.ca and ICANL.ca and between @MUN.ca and @ CPANL.CA between 2009 to present.
2.	Reason audited financial statements take over one year to produce.
3.	Expected date audited financial statements for March 31, 2019 released.
4.	Faculty of Engineering's Committee on Faculty Diversification since Jan. 1, 2019, including emails discussing committee business between committee members and/or the Engineering Dean and Associate Deans, and meeting minutes.
5.	Emails sent/received by Provost re budget, tuition and fees from Jan. 5 - Nov. 12, 2019.
6.	1. The logs of accesses to the files migrated from the hard drive of the device name XXXX-XXXX to the P: drive from the IP addresses of all ITS staff members with administrator privileges. Source: the Microsoft domain controller 2. The logs of accesses to the files migrated from the hard drive of the device name XXXX-XXXX to the P: drive. Source: the Audit journal 3. The logs of file changes pertaining to the files migrated from the hard drive of the device name XXXX-XXXX to the P: drive. Source: the Linux file server The files were migrated to the P: drive between September 6 and September 12, 2019. The scope of the search includes but is not limited to the files that were stored at that time in the \\mun-fs\homedirs$\...\2018_Fall&Winter\legal folder Period covered: September 13, 2019 between 5AM and 5PM Possible location: the Information Technology Services (ITS)
7.	the Email from Sean Cadigan to Rosemary Thorne dated August 22, 2019 (3:19PM) the Email from Roxanne Keats to Rosemary Thorne dated September 11, 2019 (4:27PM) the Email from Sean Cadigan to Kaitlin Stapleton dated March 6, 2019 (10:58PM) with attachments the Email sent from the address of the Vice-President (Academic) to Kaitlin Stapleton on March 11, 2019 (11:55AM) with attachments. Possible location: the IAP Office
8.	Notes, including notebooks or other handwritten records, generated in the process of preparing, addressing, reviewing and investigating the Respectful Workplace complaint dated October 18, 2018, in the custody and control of the interim administrative head of the […] in [date frame], [name] Records pertaining to the transfer of the Respectful Workplace complaint dated October 18, 2018 with attachments to the investigator, [name], in [date]. Possible location: Office of Faculty Relations The copy of the response to the investigation report with hand written notes of Mr. Geoff Williams, Director, Office of Faculty Relations. Possible location: Office of Faculty Relations or the IAP
9.	Emails sent/received by Registrar's Office re enrolment verification fee.

10.	Engineering search committee records for positions F03956-2019-18 and F04345-2019-1 since Jan. 1, 2019, including meeting minutes and committee member emails relating to the search.
11.	Costs re external search for President 2019.
12.	Records pertaining to the transfer of the response to the investigation report with respect to the Respectful Workplace complaint dated [date] with attachments from the Office of the Provost and Vice-President (Academic) to the Office of Faculty Relations and back. Possible location: the Office of the Provost and Vice-President (Academic) and the Office of Faculty Relations. Period covered: [date frame]
13.	Records pertaining to the initiation of the investigation of [name] conduct on [date] and to the appointment of the investigator. Possible location: the Office of the Provost and Vice-President (Academic), the Office of Faculty Relations and the IAP Office. Period covered: September 4, 2019 – December 10, 2019, inclusive.
14.	The Sender's and Receiver's copies of the Email dated April 8 and 10, 2019 from Theresa Heath to the Secretariat on Responsible Conduct of Research (SRCR) and copied on Russell Adams (two copies of each Email in the custody of Theresa Heath and Russel Adams). Possible location: the ICEHR. The Receiver's copies of the Emails dated April 9 and 16, 2019 from Hanan Abdel-akher to Theresa Heath and copied on Russell Adams (two copies for each Email in the custody of Theresa Heath and Russel Adams). Possible location: the ICEHR
15.	Correspondence among committee members related to Decanal Review Committee Dean of Nursing and Provost.
16.	President Vianne Timmons employment contract.
17.	1. Records pertaining to the production of the Emails dated September 9 and 10, 2019 from Rosemary Thorne to [name] for inspection in their native format. Possible location: the IAP Office and the ITS. Period covered: September 9, 2019 – November 29, 2019 inclusive 2. Records pertaining to the production of the Email dated September 13, 2019 from Kaitlin Stapleton to [name] for inspection in its native format. Possible location: the IAP Office and the ITS. Period covered: September 13, 2019 – November 29, 2019 inclusive
18.	1. Records pertaining to the initiation, preparation and submission of Memorial University's application to disregard the access to information request [#] 2. Records pertaining to the initiation, preparation and submission of Memorial University's request to vary procedure for disregarding the access to information request [#]
19.	1. The type and configuration of the Linux file server to which the \\mun-fs\homedirs$\...\2018_Fall&Winter\... folder was migrated between September 6 and September 12, 2019 2. Settings for log level, vfs objects, full_audit of the Samba suite on the Linux file server to which the \\mun-fs\homedirs$\...\2018_Fall&Winter\... was migrated between September 6 and September 12, 2019 3. The list of individuals with administrator privileges to view, copy, delete and change files and folders on the Linux file server to which the \\mun-fs\homedirs$\...\2018_Fall&Winter\... was migrated between September 6 and September 12, 2019 4. The Computer System Administration Policy

20.	1. Records pertaining to the initiation, preparation and submission of Memorial University's application to disregard the access to information request [#] 2. Records pertaining to the initiation, preparation and submission of Memorial University's request to vary procedure for disregarding the access to information request [#]
21.	Total spent on graduation ceremony food and drink for 2017, 2018 and 2019 (broken down by campus, semester, and year) for MUN main campus, Marine Institute and Grenfell Campus.
22.	No. and discipline of full time appointments/clinical GFT positions (assistant/associate/full professor) awarded or hired within the Faculty of Medicine since 2015.
23.	Any information about my student file [at] Memorial University I believe my student # is [number]. I studied [xxxxxxxx] in 2008 in the summer time. My D.O.B is [date]. A copy of my passport id is attached To The Request form
24.	Emails sent/received by the Provost re 2020-21 budget consultations.
25.	Budget Framework Committee of VPC agendas, briefing notes, meeting minutes, documents and correspondence.
26.	1) Legal invoices submitted by Stewart McKelvey regarding services, advice and judgement provided by [named individual], individually or in a team, since 1 Jan. 2017; 2) Records pertaining to selection of Stewart McKelvey to represent Memorial University [court docket #].
27.	Personal and business information on file with MUN including; Any information that is "recorded" in any form about the applicant described in section 3 of the Act: race, national or ethnic origin, colour, religion, age or marital status; education or employment history or information about financial transactions; any assigned identifying number or symbol; private or confidential correspondence including emails sent to government institutions, Non Government Organizations (NGO's) and or private parties; the personal views or opinions of another individual about the applicant and his business; the personal views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the applicant by an institution; the name of the applicant where it appears with other related personal information and where the disclosure of the name itself would reveal information about the applicant.
28.	Appointment letters for specified faculty members in Faculty of Business Administration.
29.	Emails sent/received by Registrar's Office re Transcript Fee.
30.	I am requesting all information regarding any and all employment hiring issues (complaints, grievances, employment equity, etc) related to the Math and Stats Department at Memorial University St. John's Campus. The requested dates are from September 1, 2003 - Present. I am requesting emails, internal mail, external mail, audio recordings, video recordings, personal files, handwritten statements, and any other means someone might use for recording information. I am requesting this information from any and all University bodies that would be involved in such a process.

31.	Short listed candidates for President of Memorial University in 2019.
32.	Renaming of Corte Real and decision to transform Corte Real from a student space for Burton's Pond residents into an international student center/recruitment office.
33.	An Update on the 2004 Pre-Feasibility Study for a Fixed Link between Labrador and the Island of Newfoundland" working files in Excel or .XML format for Vol. 2, Appendix G Economic Analysis Workbooks.
34.	Breakdown of fees/costs expenses associated with Student Success Collaborative (SSC) since its inception.
35.	Number of Students participating in Student Success Collaborative (SSC) and number of faculty/staff using SSC since 2018.
36.	Records re [name of business] on file with Botanical Gardens from July 1, 2017 to Feb. 10, 2020.
37.	1. Records of R. Kelly from the Office of Faculty Relations hand delivered to the IAP Office on March 6, 2019 2. The attachment Cadigan response [ATIPP file #] c.pdf to Email correspondence from S. Cadigan to K. Stapleton dated March 6, 2019 3. Documents from [name] delivered via internal mail to the IAP Office on March 14, 2019 Possible location: the IAP office
38.	Records pertaining to the review of the formal respectful workplace complaint made by the requester under Memorial's Respectful Workplace Policy on [date] Period covered: [date frame] Possible location: The Office of Faculty Relations
39.	Costs re QEII Library expansion.

40.	I am seeking copies of all available records related to: A complaint originally lodged orally by myself with [name] of [name of unit] on or about March 3, 2019, which was followed up by [name] of [name of unit] on or about March 12, 2019 and subsequent complaints lodged with [name] until December, 2019. The complaints related to the [nature of allegation] my company, as well as other [third parties], by [name]. Any complaint made to [name of unit] between March 1, 2019 and February 12, 2020, by any other company or person, related to the [nature of allegation] at Memorial where I was named or referenced. A complaint to [name of unit] by [name] against me on or about March 19, 2019 regarding an incident which occurred on March 19, 2019. A complaint to [name of unit] by [name] against me on or about February 6, 2020 regarding an incident which occurred on February 4, 2020. A complaint to [name of unit] by [name] against me on or about February 10, 2020 regarding an incident which occurred on February 10, 2020. I am seeking copies of all available records relating to the above including, but not limited to, the original complaint, incident and investigative notes and reports, written and e-mail correspondence, witness statements or summaries, and any other forms or reports relating to the investigation, as well as reports prepared by [name of unit] for the Chief Risk Officer or the Vice-President (Administration & Finance), and reports prepared by the Office of the Chief Risk Officer for the Vice-President (Administration & Finance). I am also seeking copies of all available records relating to any complaint made by [name] between March 1, 2019 and February 12, 2020 to the Vice-President (Administration & Finance), the Vice-President (Academic) or the Office of the Board of Regents alleging [nature of allegation] on my part or referencing me. This includes, but is not limited to, the original complaint, notes, written and e-mail correspondence and reports prepared by the Office of the Vice-President (Administration & Finance), the Office of the Vice-President (Academic) or the Office of the Board of Regents, or by any other person assigned by the Office of the Vice-President (Administration & Finance), the Office of the Vice-President (Academic) or the Office of the Board of Regents to evaluate or investigate the complaint(s).
41.	Costs of MUN cell phones issued to staff from Jan. 1, 2010 to present by year.
42.	Emails sent/received by Provost re budget consultations from Nov. 1, 2019 to Feb. 18, 2020.
43.	Deans' Council meeting minutes, reports, agendas, briefing notes, presentations, and correspondence re tuition fees from Jan. 1, 2019 to Feb. 19, 2020.
44.	Space Reports from all academic units within the Faculty of Humanities and Social Sciences and Faculty of Education, i.e. the exact space allocations for graduate students (both master's and PhD) within each faculty and unit (including the exact square footage of these allocations).
45.	Records regarding transphobic messages posted around St. John's campus in Sept. 2018 from Offices of President, Provost, Vice-President (Academic), Campus Enforcement and Facilities Management.
46.	Mental health accommodations, services utilization and programming - 2014-2019.
47.	Costs re external counsel for non-academic appeals from Jan. 1, 2015 to Feb. 25, 2020.
48.	Data re non-academic appeals including total number by year from Jan. 1, 2015 - Feb. 25, 2020.
49.	Process for selecting Dr. Kachanoski's replacement as President and Vice-Chancellor of Memorial University.

50.	Dean of Nursing Decanal Review Committee feedback and information in Bright Space Shell created by Chair of Review Committee.
51.	Data re formal respectful workplace complaints, including total number by year from Jan. 1, 2010 to March 10, 2020.
52.	Costs re external counsel for formal respectful workplace complaints from Jan. 1, 2010 to March 10, 2020.
53.	Notes/information taken during Nov. 2019 budget consultations by the note takers.
54.	Information to/from CEP and [specified staff] of QE II Library from Sept. 1, 2019 to March 11, 2020.
55.	Charges for modifications/upgrades/conversions/etc.to Student Success Collaborative (SSC) from June 27, 2017 to March 11, 2020.
56.	Correspondence re "First Year Success" program to/from specified individuals between Jan. 2014 and Dec. 2017.
57.	“First Year Success” program annual budgets, including preliminary start-up costs and any reports produced.
58.	I am requesting all information regarding myself, [name], regarding any and all subject matter from September 1, 2019 – Present; in which I have been personally named or insinuated about. I am requesting emails, internal mail, external mail audio recordings, video recordings, personal files, handwritten statements, and any other means someone might use for recording information. I am requesting this information from the [name of unit] St. John’s Campus.
59.	Records pertaining to the workplace investigation initiated on [date] and the subsequent [outcome]. The access is sought pursuant to S. 33(3) of the ATIPPA, 2015. Possible location: the IAP Office, the Office of Faculty Relations, the Office of the Provost and VP (Academic), the Office of the General Counsel. Period covered: February 11, 2020 to date.
60.	1) Email bearing ATIPP File 007-06-05-18 sent by IAP office (period Oct. 12-31, 2018) 2) Records pertaining to selection of Stewart McKelvey to represent Memorial University [court docket #]; 3) Records pertaining to change of legal counsel of record [court docket #].
61.	Documentation between Ms. Tanya Davis (Director of ESL) and [name] [student status] regarding a meeting requested by Ms. Davis to meet with me and my ‘rejection’ (according to [name]) to attend such meeting. I am wondering how does [name] know about such detail of communications between Ms. Davis and myself even though he is not attached to any of our email communication. I am requesting documentations as I [description of concern].
62.	All information from 1 January 2014 to 6 April 2020 about applicant held by the Department of Human Resources, Campus Enforcement and Patrol (CEP) and the Registrar’s Office.
63.	Usage of Marine Institute's Twitter account to post using the #MyOffshoreMyFuture hashtag.

64.	All records, including emails, in the custody and control of the MUN Office of Public Engagement staff and communications advisors embedded in the Office of the Provost and VP(A) and the Office of the HSS Dean in which my name [name] is mentioned Period covered: March 30, 2020 to date
65.	I wish to review a copy of my application and related documents that were submitted around February 2019 [name of faculty] at Memorial University of Newfoundland to better understand why I was not accepted. (I do not intend to retaliate, I am just looking to better understand documents relating to my application.)
66.	Enrolment numbers for St. John's, Marine Institute and Grenfell Campuses for the past 5 years, including the increase or decrease percentage for each year.
67.	Enrolment numbers for each program (including Graduate Studies) at Grenfell Campus for the past 5 years, including increase or decrease percentage for year.
68.	Amount spent on infrastructure at Grenfell Campus since 2004, including amount associated with each specific project.
69.	Number of international students at Grenfell Campus broken down by program, including country of origin of the students.
70.	Amount received by MUNSU, MUN Graduate Students Union and the Grenfell Students Union through collection of union fees by University through tuition for past 10 years.
71.	Emails since 13/11/2018 re “Addressing Islamophobia in NL Project”, including a breakdown of funding for this initiative and any official reports or documents created by this project.
72.	Number of cases/referrals reported to Sexual Harassment Advisor by year for the last 10 years.
73.	Number of students in residence and how many are international students vs. Canadian/domestic students by semester for the past 5 years.
74.	Number of students claiming aboriginal ancestry for the past 3 years, whether this is self-declared or status and what the aboriginal groups are for each program at MUN and listing Grenfell Campus separately.
75.	Results of each Board of Regents Alumni elections as far back as records allow.
76.	Emails sent by [specified employees] of Marine Institute that include the term 'DecarbonizeNL' or 'DecarboniseNL' from Sept. 1, 2018 to Dec. 1, 2019.
77.	All records pertaining to applicant in relation to not being permitted on campus or being accused of trespassing. These records are sought from Campus Enforcement and Patrol.

78.	I wish to obtain access to information from three departments at Memorial University. 1. The [name of unit] at Memorial University including: Notes on my call exchange [date] Notes on my meeting [date]; All subsequent documentation thereafter [about me] 2. The [name of unit] of Memorial University including: All [system name] documentation written by or mentioning me throughout the timeframe of [specified 10 month period], inclusive. Email exchanges discussing [subject matter] between myself and/or [name] and/or [name] - as these [subject matter] discussions between [name] and either respective party [names] impacted [description] (these emails likely took place between [specified five month period]; The responses of the [survey instrument] on [me] all subsequent statistics created by, and for use, for the [name of unit and survey instrument information]; Any and all documentation, between [specified 10 month period] inclusive, that names [me]; specifically, documentation of internal reporting regarding the incident between myself and [name]. 3. The [name of unit] at Memorial University including: Notes from my phone call with [name] [date]; Notes from my subsequent meeting with [name] and [name] [date]; Any and all documentation between [two week period], and thereafter, that names [me].
79.	Any and all information including BBMs, text messages, emails, and other form of electronic communication from [name], [name], and [name].
80.	Mathematics component of MUNs Bridging Program, including correspondence regarding: (1) set up the program; (2) selection process of the instructors; and (3) any employment applications by applicants from Jan. 1- June 22, 2020.
81.	Set up of Math 109A and 109B Programs, including correspondence regarding: (1) set up the program; (2) selection process of the instructors; and (3) any employment applications by applicants from Jan. 1, 2017 - June 22, 2020.
82.	Positions filled in the [name of unit] for: Teaching Term Appointments (contracts 1 year or less) and Per-Course Instructor Positions (all contracts) - specifically, all applications by applicants for such positions for the past 10 Set up of [names of course program], including correspondence regarding: (1) set up the program; (2) selection process of the instructors; and (3) any employment applications by applicants from Jan. 1, 2017 - June 22, 2020.
83.	Communications between consultants and the University respecting changes to fees or claim for additional fees regarding the Core Sciences Building Project.
84.	Tender TFM- 067-19 (Snow Clearing and Ice Control, St. John's Main Campus) - response to low and/or successful bidder.
85.	All emails sent/received by the President regarding tuition and fees from April 1st 2020 to present.

86.	Course outlines from Dept. Mathematics & Statistics (St. John's Campus) for the following: Stats 2410 (since the courses' existence); Stats 3410 and 3411(past 10 years); Math 109A and 109B (since the courses' existence).
87.	Documents pertaining to [a tenure track position]
88.	President Vianne Timmons moving expenses.
89.	Emails sent/received by the President's Office re Defund the Police, Twitter, Kerri Claire Neil, Mark Lane, and the Board of Regents from June 7 - July 23, 2020.
90.	Emails sent/received by the Office of the Board of Regents re Defund the Police, Twitter, Kerri Claire Neil, and Mark Lane from June 7 - July 23, 2020.
91.	Emails sent/received by the Office of the Associate Vice-President (Facilities) re MEN WORKING ABOVE construction signs from Jan. 1, 2015 to July 29, 2020.
92.	Communications between consultants and the University respecting delays in construction regarding the Core Sciences Building Project.
94.	All data re fines issued to students by residence including by year from 2010 to 26 Aug. 2020.
95.	Enrollment by FTE by each undergraduate/graduate program for academic years 2013/14 to 2019/20; List of new undergraduate/graduate degree programs approved by Senate for academic years 2013/14 to 2019/20; Full Senate documents for academic year 2019/20; International recruitment costs broken down by categories such as student travel costs, recruitment agent costs, marketing operational costs, etc. for academic years 2013/14 to 2019/20; Total international student recruitment budget for each of the academic years 2013/14 to 2019/20; and Number of employees working in international student recruitment.
96.	Written communication between Office of Faculty Relations and Department of Human Resources, including Payroll, in which the requester's personal information [name] is mentioned Period covered: March 18 - September 9, 2020. Possible location: the Office of Faculty Relations
97.	All employment related files about me in [name of office]. Copy of my personnel file Copies of [documents] submitted to any past or present member of a Promotion and Tenure Committee about me and correspondence discussing these Copies of the minutes in which [topic] discussed Documentation or minutes pertaining to any other issues or concerns about [me] to members of past Promotion and Tenure Committees or the Dean Email trail between [name] and [name] and/or [name] and/or [name] concerning [topic].
98.	Convocation ceremony of 16 May 2019 MC notes and script.
99.	All emails, including attachments, sent or received by [name and accounts] that contain personal information about [name]. Period covered: April 7, 2017 to date

100.	Emails sent/received by Provost Mark Abrahams regarding remote teaching and learning and planning for the winter semester from 1 Sept. 2020 to 5 October 2020.
101.	Emails sent/received by President Vianne Timmons from 1 Sept. to present re Winter semester 2021 remote teaching and learning.
102.	Number of non-union, management /executive level employees terminated using the terminated without cause policy since 2003.
103.	Emails sent/received by the Provost re tuition and fees from May 1st 2020 to present.
104.	Copy of the Delay Notice Letter dated March 19, 2018 regarding the Core Science Facility Project CSF-001-12.
105.	Records pertaining to the initiation, preparation, review and approval of MUN's application to the Information and Privacy Commissioner and approval to disregard the access to information request file [#]
106.	I wish to obtain access to information from several departments at Memorial University. The [name of unit] at Memorial University including: notes on all call exchanges, emails, and all subsequent documentation in between or thereafter [about me]. The [name of unit] of Memorial University including: all [name of system] documentation written by or mentioning me throughout the timeframe of [13 month period]; this includes any and all documentation or emails that [name me]; specifically, documentation of internal reporting regarding the incidents between myself and [name]. The [name of unit] including: all notes or emails pertaining to [nature of activity] I have had with [name of unit].
107.	Tender TFM-024-20, Structural upgrades for Tunnel System, Closed July 14, 2020.
109.	I have been informed of existence of [description of document]. I am requesting copy of [these document(s)] and names of the author(s) of any and all letters.
110.	All information to and from specified individuals regarding UnBound Chemicals; additionally, records from the Faculty of Business Administration regarding UnBound Chemicals, specifically pertaining to the related Gazette article published: https://gazette.mun.ca/campus-and-community/rewarding-innovation/.
111.	All records concerning remuneration for Dr. Andrew Furey from August 19 to November 3, 2020. This should include, but not be limited by, faculty appointments, regular pay, overtime, research projects, special projects, consulting fees, travel, administration, etc.

112.	email trail between [name and position] or any other member of Faculty within Memorial University and [name and position] and/or name and position] and/or [name and position] concerning [description] released on [date] [location] email trail and/or meeting minutes regarding the letters dated: [dates] [Subject] between any of the following people: [multiple specified names] and/or any other person. emails and/or meeting minutes between any of the following people (members of P&T Committee 2019): [specified names] and/or any other person concerning [name] between [14 month timeframe].
113.	"Educational Profile of the Learning Needs of the Innu Youth" study conducted between April 2003 and June 2004.