

Citation: 2025 NBKB 070

Date: 2025-04-11

Docket: FM-3-2025

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK  
TRIAL DIVISION  
JUDICIAL DISTRICT OF FREDERICTON

BETWEEN:

JULMAC CONTRACTING LTD.

– and –

THE PROVINCE OF NEW BRUNSWICK

Date of Motion: March 11 and 21, 2025

Date of Decision: April 11, 2025

Subject Matter: Referral - *Right to Information and Protection of Privacy Act*

Before: Justice E. Thomas Christie

At: Burton, New Brunswick

Appearances: Shalom Cumbo-Steinmetz, Lauren Nickerson and Alison Schwenk, for the Applicant

Chad Sullivan and Lara Greenough, for the Respondent

[1] This is a referral (pursuant to s. 65 of the *Right to Information and Protection of Privacy Act*, SNB 2009, cR-10.6, *RTIPPA*) by Julmac Contracting Limited seeking the release of certain public records, in the possession of the Respondent, Province of New Brunswick (PNB – sometimes referred to in the documents as ‘DTI’). Julmac is a construction company. It had contracted with PNB for work on certain bridge projects in New Brunswick. The referral relates to two requests for information filed under the *Act*, seeking certain records relating to various construction projects involving PNB and other contractors. The requests for information that are at issue in this proceeding were originally filed on August 25, 2023, and September 9, 2024. Two other requests have been made by Julmac (September 7, 2023 and April 25, 2024) but they are not the subject of this proceeding.

[2] Underlying the present matter are two legal proceedings filed by Julmac against PNB alleging violations by PNB of its contractual obligations to Julmac. The proceedings relate to various bridge construction projects in which Julmac is involved in New Brunswick. Julmac has filed an action in court (FC-344-2023) and commenced a proceeding against PNB under the *Canada Free Trade Agreement*. While the specifics of those proceedings are not pertinent here, the crux of Julmac’s complaint is that PNB has treated Julmac, in a materially different way, than it has other contractors engaged by PNB on other projects. The essence of the claims is described by PNB in its pre-hearing brief at para 9 as follows:

The majority of Julmac’s claims are premised on its theory that the Province requires Julmac to meet standard specifications set out in its construction contracts with the Province (the “Standard Specifications”), while allegedly not requiring the same of local contractors. The two RTIPPA requests that are the subject matter of this hearing are focused on compliance with the Standard Specifications by other contractors.

[3] The affidavit of Karen Anne Craig-McAdam, a former employee of PNB, but now a consultant hired to respond to Julmac's requests, describes the substance of the August 25<sup>th</sup> request as follows at p. 264 of the Record:

16. The request seeks, over a nearly 10-year period (from 2014 to present), many documents relating to Julmac and documentation pertaining to 25 different projects and requests documents pertaining to Standard Specifications (including communications requiring or not requiring compliance with the contractual Standard Specifications.)

[4] Ms. Craig-McAdam's affidavit described the September 9<sup>th</sup> request as follows a pp. 275-276 of the Record:

55. On September 9, 2024 Torys filed another RTIPPA request with DTI a copy of which is attached as Exhibit "27".

56. This request seeks certain information pertaining to a contract awarded to Caldwell & Ross Limited.

57. The documents relate to the Action and the CFTA Complainant. Torys' Statement of Particulars specifically refers to this project at p. 2, p. 7, p. 10, p. 11, p. 12 and p. 14 of its Statement of Particulars.

58. This project (i.e. the Coles Island Bridges Project awarded to Caldwell & Ross Limited) was also specifically identified as one of the 25 projects for which Torys is seeking information under Torys 1<sup>st</sup> RTIPPA Request re: Specifications.

[5] For the purpose of context, it is worth noting the significant number of documents or records involved in the requests. Taking just the August 25, 2023 request, and using as a reference the letter from the Ombud to DTI on October 10, 2023 (wherein an extension of time to comply with the requested information is being granted) the Ombud notes, at pp. 420-421 of the Record:

Here, the Department explained that the volume of the request is massive, estimating the approximate total number of records to be around 175,000 or about 7000 pages of records per project requested, with having search approximately 250,000 electronic records. The Department explained that it would normally consider

a request for one sole project to be a large request, but here, the Applicant is seeking information relating to 20-25 projects.

...

Based on my review of the Application, I find that the Department has demonstrated that it requires additional time to respond to the request at issue due to the large number of records requested, under s. 11(3)(c) of the *Act*, given that the number of pages to be searched for this request amounts to approximately 250,000 pages.

[emphasis added]

[6] The April 25, 2024 request (not subject to this referral) involved an estimated 390,000 pages [Record p. 463].

[7] Despite the massive number of records PNB was requested by Julmac to review and produce, as per the two *RTIPPA* requests presently at issue, it was working toward compliance with those requests. It was taking considerable time and significant resources were dedicated to answering the requests. Extensions for compliance had been given by the Ombud. But the point is, PNB was working toward complying with the requests.

[8] On October 6, 2023, PNB was notified by Julmac that it intended to file a claim against PNB, based ostensibly, on the notion that it had been unfairly treated. In other words, at no time, prior to the November 25, 2024 letter (announcing its intention to end its processing of the *RTIPPA* request of August 25, 2023) did PNB consider it had a basis to not comply with the request. In fact, PNB had confirmed to Julmac its specific intention to comply.

[9] On October 25, 2023, Deputy Minister Taylor wrote to Julmac's counsel noting the significant number of records/pages of material for review. Deputy Minister Taylor noted that an extension for compliance had been granted by the Ombud. Also, Deputy Minister Taylor committed to providing the requested documents in stages, writing (p. 147 of the Record):

As per clarification received on October 5, 2023, the Department will prioritize the search for relevant records pertaining to the most recent contracts first, working its way to the oldest ones, and will provide partial responses as each contract is completed.

[emphasis added]

[10] In my view, it is to be noted that there is no indication that PNB would be objecting to the request based on the premise that it was all just a, ‘fishing expedition’.

[11] The work by PNB toward compliance with the requests continued until November 25, 2024, when PNB stopped. The reason given was PNB’s interpretation of a recently released ruling from this court (but a different Justice). PNB interpreted that decision as standing for the proposition that when legal proceedings were underway between the parties, an exception to the required compliance existed, if the request could reasonably be considered as being injurious to the conduct of the legal proceeding.

[12] As Ms. Craig-McAdam deposed in her affidavit found at pp. 579-580 of the Record:

33. While working through the Standard Specifications Request [August 25, 2023] and the Coles Island Bridge Request [September 9, 2024], a recent decision by the New Brunswick Court of King’s Bench (*Hobbs v. SJPF*, 2024 NBKB 148) was brought to my attention (the Hobbs Decision).

34. The *Hobbs* Decision was dated July 22, 2024, but I did not become aware of it until on or about September 12, 2024.

35. I did not review the Hobbs Decision until November 19, 2024. I sent the Hobbs Decision to my supervisor, Karen Sutherland (Director of Policy and Legislative Affairs with DTI) on November 20, 2024.

36. The “Head” of DTI for the RTIPPA is the Minister of DTI who, in turn, has delegated authority under RTIPPA to the Deputy Minister – including the authority to decide to refuse to provide access to information.

37. On November 25, 2024, Rob Taylor, the Deputy Minister of DTI, issued a decision to cease processing the Standard Specifications Request and the Coles Island Bridge Request, by letter to Julmac of the same date ...

[13] The referenced November 25<sup>th</sup> letter to Julmac, wherein PNB advises that it has ceased the processing of the requests, provides as follows:

**Re: *Hobbs v SJPF, 2024 NBKB 148***

Your requests of August 25, 2023 & September 9, 2024

As you are aware, Torys LLP, solicitors for Julmac Contracting Ltd. ("Julmac"), has submitted requests for information under the New Brunswick *Right to Information and Protection of Privacy Act* ("*RTIPPA*") filed with the Department of Transportation and Infrastructure ("DTI") dated August 25, 2023 and September 9, 2024 (the "*RTIPPA* Requests").

The *RTIPPA* Requests seek documents that go to the heart of the dispute between the Province of New Brunswick and Julmac, as detailed in the pleadings filed by Julmac in Court File No. FC-344-2023 (the "Action") and in Julmac's complaint under the Canadian Free Trade Agreement dated March 8, 2024 (the "CFTA Complaint").

As these records go to the heart of the allegations made by Julmac in the above noted legal proceedings, we are notifying you that we are ceasing to process the *RTIPPA* Requests under s.29(1)(0) (the disclosure of this information could reasonably be expected to be injurious to the conduct of existing legal proceedings to which the Province of New Brunswick is a party) and s.14(2)(a) (a public body may refuse to confirm or deny the existence of records containing information protected under s.29).

I have been provided a recent decision of our Court of King's Bench in *Hobbs v SJPF, 2024 NBKB 148* dated July 22, 2024, which in our view supports our position.

In that case, an employee of the public body had multiple ongoing legal proceedings against the public body. The employee filed an *RTIPPA* request for documents that were centrally relevant to her legal claims against the public body. Justice Hamou permitted the public body to refuse disclosure under s.29(1)(0), holding:

41. *Cst. Hobbs acknowledged the main reason*

for filing an RTIPPA request was to establish what information was within the knowledge of the SJPF at the time certain decisions were made and certain conversations occurred. Cst. Hobbs felt she was treated unfairly in the process and sought vindication through information contained in certain documents.

42. The language of subsection 29(1)(0) of RTIPPA includes the component of disclosure being "injurious to the conduct" of legal proceedings or anticipated legal proceedings. As noted by Cst. Hobbs, the threshold is that the information is "reasonably expected to be injurious." In this case, the documents go to the heart of the dispute between the parties. The knowledge, and decisions that flowed from that knowledge, are the object of the legal proceedings between the parties. Therefore, the disclosure is reasonably expected to be injurious to the integrity of the adjudication process in the ongoing legal proceedings considering the nature of the documents sought and the nature of the dispute between the parties.

43. The Court confirms the SJPF's refusal to provide access to Documents 1 to 73 from the list produced to the Court on June 6, 2024, based on paragraph 29(1)(0) of RTIPPA.

[underlined emphasis in original letter]

It is evident that your main purpose in filing the RTIPPA Requests is for Julmac to support its claims against the Province as detailed in the Action and CFTA Complaint - and therefore it is not surprising that the information sought goes directly to the heart of Julmac's Action and CFTA Complaint.

If you are unsatisfied with this response, you may file a complaint with the Office of the Ombud of New Brunswick or you may refer this matter to a judge of the Court of King's Bench.

Yours truly,

Rob Taylor  
Deputy Minister

[14] The crux of the issue being that, based on the *Hobbs* decision, PNB was of the view that it did not need to complete the compliance with the request, which had been ongoing up to that point. PNB did not assert in the above letter, that it stopped processing the requests because it viewed the requests as a ‘fishing expedition’.

## ARGUMENT AND ANALYSIS

[15] During argument, counsel for PNB noted that the substance of his client’s objection was founded on the notion that the requests were nothing more than a fishing expedition. While that may be an arguable point, the impact of the argument is undermined by PNB’s willingness, from the beginning, to comply with the requests, as arduous as that may have been. Moreover, work on compliance with the requests continued during the time when legal proceedings against PNB were live. As noted, in Deputy Minister Taylor’s October 25, 2023 letter to Julmac’s counsel, the August 25, 2023 request would be complied with, in batches, as the work was ongoing. While such broad requests could, on their face, be characterized as ‘fishing expeditions’, that was not the view of PNB as discernable in the present Record. It was PNB’s discovery of the *Hobbs* decision that brought the process to a halt.

[16] PNB acknowledges that it carries the burden to justify its refusal to comply based on the relevant provisions of the *Act*. At issue is ss. 29(1)(o) of the *Act*. It provides as follows:

Disclosure harmful to law enforcement or legal proceedings

29(1) The head of a public body may refuse to disclose information to an applicant if disclosure could reasonably be expected to

(o) be injurious to the conduct of existing legal proceedings to which the Province of New Brunswick or the public body is a party or anticipated legal proceedings to which the Province of New Brunswick or the public body may become a party.

[emphasis added]

[17] The authorities cited by the parties included two New Brunswick cases wherein ss. 29(1)(o) was considered, *Hobbs*, which has already been mentioned, and *McCrea v. Mountain Industrial Development Limited*, 2019 NBQB 107. In *McCrea*, the applicant was attempting to get from the Respondent information for use in an expropriation arbitration proceeding – information that could not be obtained by other means. Justice Ouellette wrote, at para. 11 of his reasons:

[11] Needless to say, the purpose of requesting this information is for use as evidence in the Arbitration case and it may be injurious to the conduct of these existing legal proceedings. This is actually what the Legislature was trying to avoid by including this provision in s. 29(1)(o) of the Act.

[emphasis added]

[18] I note the use, by Justice Ouellette, of the phrase that the information being sought *may be* injurious to the arbitration. It may well be that the evidentiary record before him fleshed out, in more detail than the present Record shows, the nature of the injury to the legal proceeding that *may* arise. I say this because counsel before me were clear, when questioned by me, that ss. 29(1)(o) was not to be interpreted as simply meaning that *if* legal proceedings were ongoing, then there could be no recourse to the provisions of *RTIPPA*. There needed to be more. If the legislative drafters intended to state the proposition that *if* there were ongoing legal proceedings then *RTIPPA* would not apply, the drafters could have said so. In any event, as I say, neither party here assert that to have been the legislative intent.

[19] This is the difficulty I have with the basis for the refusal of PNB to comply with the requests. Yes, there are ongoing legal proceeding between these parties, but what is in the Record to demonstrate that it is reasonably expected that disclosure may be injurious to *the conduct of* the legal proceedings? The letter of November 25<sup>th</sup>, from Deputy Minister Taylor, does not assert any such consequence.

[20] This is a point made by Julmac – that the focus of the inquiry cannot be on the impact disclosure may have on the *merits* of the underlying case, but rather is focused on how disclosure may be injurious to the *conduct of* the legal proceedings.

[21] I share that view.

[22] In *Hobbs*, the court was satisfied, on the evidence before it, that disclosure could be reasonably injurious to the conduct of the proceedings. I am not similarly convinced in this case. To the degree that PNB may have encouraged a reading of *Hobbs* that included some assessment of the impact disclosure may have on the *merits* I could not, respectfully, adopt that view. The *Act* does not include consideration of any reasonable likelihood that the disclosure could be injurious to the *merits* of a proceeding, but on the *conduct* of it. This is why, in my view, the present focus should be on the evidence in the Record to demonstrate that the *conduct* of (not the *merits* of) a proceeding is engaged.

[23] I am of the view, and so Order, that PNB must complete the final phase of its review and complete full disclosure of the Standard Specifications Request of August 25, 2023, and the Coles Island Bridge request of September 9, 2024. The present Record does not demonstrate to my satisfaction how compliance with the RTIPPA requests could be reasonably injurious to the conduct of the underlying proceedings.

[24] PNB has asserted that compliance with the Coles Island Bridge request could be completed within approximately 30 days. To be on the safe side, I will direct completion within 60 days of this ruling. Julmac suggests that PNB should turn over the documents it has reviewed in relation to the Standard Specification Request (as it had committed to do in October 25, 2023 letter from Deputy Minister Taylor). I can see no reason why that could not happen without undue delay. As for the remaining documents in the Standard Specification Request, I am not certain I can determine a reasonable date without further submissions. I understand that a further

267 days is suggested by PNB. However, I would ask counsel to consult each other in hopes of determining a schedule for disclosure of the remaining documents. If the parties are unable to agree, then they may seek a return appearance for that purpose.

[25] Julmac is entitled to costs on this referral in the amount of \$3,000. plus HST and taxable disbursements.

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Justice E. Thomas Christie  
Court of King's Bench of  
New Brunswick, Trial  
Division