

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Bilsbury v. Saint Mary's University*, 2026 NSSC 155

**Date:** 20260507

**Docket:** *SH* No. 544106

**Registry:** Halifax

**Between:**

Tanya Bilsbury

*Applicant*

v.

Saint Mary's University

*Respondent*

**Judge:** The Honourable Justice Michelle Kelly

**Heard:** April 1 and 2, 2026 in Halifax, Nova Scotia

**Final Written Submissions:** May 1, 2026

**Counsel:** Tanya Bilsbury, self-represented  
Bradley D.J. Proctor, for the Respondent

**By the Court:**

**Introduction**

[1] The Applicant filed for a judicial review of a decision made by the Respondent's Senate Executive Committee. This preliminary motion is to determine what materials should be included in the record and how the record is to be produced. Specifically, the Applicant's Notice of Motion reads: "Tanya Bilbury, the applicant, moves for an Order directing that the record filed on the judicial review be rejected and replaced with a record consisting of the material that was before the Senate Executive Committee."

[2] The Applicant also requests that the record be produced electronically because of various hyperlinks to documents. She also takes issue with how the record was originally produced by the Respondent.

[3] The Respondent agreed the original record was missing materials and produced an amended record, prior to the hearing of this motion. However, there are still questions and concerns with respect to the amended record and what the Applicant believes is a piece-meal method of producing the record.

[4] The Respondent's position is that everything that was before the Respondent's Senate Executive Committee should be included in the record. Nothing more, but nothing less. After hearing the concerns of the Court, as outlined at the hearing of this motion, the Respondent prefers filing of a paper record only.

### **Facts**

[5] As this motion involves what should be included in the record and is not meant to address the merits of the Judicial Review, the facts applicable to this matter are summarized as follows:

1. The Applicant was granted a one year leave of absence from her PhD program in Industrial/Organizational Psychology on December 20, 2022;
2. In July of 2023, the Applicant applied for early reactivation into the program but her request was denied;
3. In late November/early December, the Applicant re-applied for reactivation into her PhD program in Industrial/Organizational Psychology;

4. On December 19, 2023, her request to be reactivated into her PhD program in Industrial/Organizational Psychology was denied but she was offered the option of “transferring” into the PhD Applied Science program;
5. On December 22, 2024, the Applicant appealed that decision to the Senate Committee on Academic Appeals;
6. Her appeal was heard on March 6, 2025, and the Senate Committee on Academic Appeals issued its decision on March 10, 2025, denying the appeal;
7. At the March 6, 2025 meeting of the Senate Committee on Academic Appeals, Ms. Dorcas Seun-Salami took notes on behalf of the Committee;
8. The Applicant appealed this denial to the Senate Executive Committee on April 10, 2025 and at a meeting of May 8, 2025, the Senate Executive Committee denied the Applicant’s appeal, issuing its decision on May 9, 2025;
9. At the May 8, 2025 meeting, Ms. Shannon Morrison took notes on a laptop though such notes were not meant to be a transcript of the

proceeding – instead she used the notes to prepare meeting minutes and produced those on July 28, 2025, to the Chair of the Senate Executive Committee; and

10. The Applicant applies for a Judicial Review of this May 9, 2025 decision of the Senate Executive Committee.

### **Issues**

[6] As a result of the oral submissions and further written submissions, the issues for this Court to decide are as follows:

1. Is the record, as produced by the Respondent on March 2, 2026 (the “Amended Record”), accurate and complete?
2. If no, what further documents need to be included or removed to ensure a complete record?
3. Will the hearing notes prepared by Ms. Dorcas Seun-Salami form part of the record?
4. Will the hearing notes prepared by Ms. Shannon Morrison form part of the record?

5. How should the record be produced, either electronically or in paper form?

### Law and Analysis

[7] The Civil Procedure Rules require the decision-making authority to file with the Court and deliver to the Applicant “a complete copy of the record, with copies of separate documents separated by pages with numbered or lettered tabs” (see Rule 7.09.)

[8] Although “record” is not defined in the Rules, the case of *IMP Group International Inc. v. Nova Scotia (Attorney General)*, 2013 NSSC 332, outlines a definition of “record” that has been cited on various occasions by cases out of this Court. At paras 21 and 24, the Court outlined:

[21] The *Civil Procedure Rules* do not define the “record,” but the decision-making authority is required to produce it: Rule 7.09(1). A judge hearing a motion for directions may make certain determinations about the content of the record. This provides no guidance as to how such a determination should be made. According to Sara Blake, in *Administrative Law in Canada*, 5<sup>th</sup> edn. (LexisNexis, 2011), at 202-203:

The record that was before the tribunal is the evidence on which a court bases its review of the tribunal’s action or decision... The record must include the document that initiated the proceedings before the tribunal and the tribunal order or decision. If relevant to the issues raised in the application for judicial review, the record may include the tribunal’s reasons ..., interim rulings made by the tribunal, [and] the exhibits filed with the tribunal... The record does not include communications for the purpose of settlement nor documents protected by deliberative secrecy or privilege such as drafts of the tribunal decision... The tribunal is not obliged to create new documents as the record

contains only existing documents in the possession of the tribunal that were used in making the decision. [Emphasis added.]

Blake goes on to say, at 204-206:

Only material that was considered by the tribunal in coming to its decision is relevant on judicial review because it is not the role of the court to decide the matter anew. The court simply conducts a review of the tribunal decision. For this reason, the only evidence that is admissible before the court is the record that was before the tribunal. Evidence that was not before the tribunal is not admissible without leave of the court. If the issue to be decided on the application involves a question of law, or concerns the tribunal's statutory authority, the court will refuse leave to file additional evidence. Evidence challenging the wisdom of the decision is not admissible... If the applicant alleges bias, use of statutory power for an improper purpose, fraud on the tribunal, absence of evidence to support a material finding of fact or failure to follow fair procedure, the court may grant leave to file evidence proving these allegations...

...

In exceptional circumstances, applicants may be permitted to obtain evidence by questioning the decision makers or tribunal registrar as to the process by which the tribunal made its decision, but no inquiries may be made into the deliberations of the decision makers, which are protected by deliberative secrecy...

[24] As to the content and definition of the record, Brown and Evans write, at §6:5300, that, in the absence of statutory direction to the contrary,

the content of the administrative record has, in the past, been limited to documents initiating the administrative proceedings, the pleadings, if any, the decision itself, and the reasons for the decision... More recently, however, some courts have recognized that because of the evolution of the scope of judicial review, namely its extension to include review for errors of fact and mixed fact and law, that the evidence before the statutory decision maker ought to be included as part of the record.

[9] Here the parties agree. The record should include **everything** that was in front of the decision-making authority. In this case, that would be everything that was in front of the Senate Executive Committee.

[10] On March 2, 2026, the Respondent filed an Amended Record via USB and provided same to the Applicant. The Amended Record included various additional documents that were not originally included in the record filed with the Court on October 24, 2025.

[11] Despite what appears to have been a good faith effort by the Respondent to include everything that was in front of the Senate Executive Committee, there continued to be issues with this Amended Record. The Applicant highlighted those issues as follows:

1. Various PDFs including the PDFs showing her reactivation requests were missing information and details and she requested that the fulsome PDFs be produced in the record.
2. Her submissions to the Senate Executive Committee included various additional documents that were provided via hyperlink in her written submissions. Some of these supporting documents were included in the Amended Record where others were not.
3. In addition, the Applicant informed the Court and the Respondent that although she hoped the hyperlinks in her submissions were all still “live” she had noted that some links had been broken and that she

could provide those documents through other means for the Respondent to include in the record.

4. There were also hyperlinks contained in submissions made by Dr. Gilin but these hyperlinks were stored on a sharepoint account that only authorized users could access so none of these materials had been included in the Amended Record (at least it appeared as though they were not included.)
5. Finally, there were two sets of notes that the Applicant requested be specifically included in the record – notes taken by Ms. Dorcas Seun-Salami at the University Senate Appeals Committee (the meeting having taken place on March 10, 2025) and notes taken by Shannon Morrison at the Senate Executive Committee meeting on May 8, 2025.

[12] At the hearing of this motion, the Respondent agreed to do certain things:

1. Review the PDFs that were missing content – specifically her 1<sup>st</sup> reactivation request (appended to the June 19, 2023 email to Dr. Gilin) and her 2<sup>nd</sup> reactivation request (appended to the November 30, 2023

email to Dr. Sarty) and ensure the PDFs with all content visible be included in the record;

2. Ensure that all attachments to the November 30, 2023 email the Applicant sent to Dr. Sarty be included and properly referenced to this email (for example in the paper record filed on October 24, 2025, the letter at Tab 17 is one of the attachments that should be included as part of the November 30, 2023 email);
3. Review the hyperlinks and ensure that all material that was provided via hyperlink could be downloaded and included in the record – this includes the hyperlinks that are “live” in the Applicant’s submissions to the Senate Executive Committee dated April 10, 2025 and May 2, 2025, as well as her submissions to the Senate Committee on Academic Appeals dated December 22, 2024 and Dr. Gilin’s submissions to the Senate Committee on Academic Appeals dated February 20, 2025;
4. If any of the hyperlinks of the Applicant were no longer working, to work with her to gather the applicable materials; and

5. To confirm whether the notes taken by Ms. Dorcus Seun-Salami at the meeting on March 5, 2025 were placed before the Senate Executive Committee in its May 8, 2025 meeting.

[13] Both parties provided further written submissions to the Court on May 1, 2026. In the submissions of the Respondent, it confirmed the existence of notes from Ms. Dorcus Seun-Salami and that such notes were given to the Senate Executive Committee and formed part of what the Committee had at the time of their meeting and decision in relation to the Applicant – therefore the Respondent conceded these notes should form part of the record and have provided a copy of those to the Applicant.

[14] The Respondent also noted that in reviewing the hyperlinks, the use of third-party drives and the fact that the Court does not have a mechanism for filing electronic materials, it was best that the record be produced in paper to ensure all parties, including the Court, were working with the same material and such material could be properly referenced at the hearing.

[15] The Applicant also reviewed the materials and provided the Respondent with a spreadsheet that outlined the duplicate hyperlinks/documents that did not need to be produced more than once or did not need to be produced in the record.

[16] In her May 1, 2026 submissions, the Applicant outlined the “outstanding issues” as follows:

1. Hyperlinked Materials – will they be included in the printed Record?
2. Will replacements for broken links be included?
3. Will correct document versions (the PDF issue highlighted above) be included?
4. Will the minor errors of incorrect document labels, dates and ordering issues be addressed?

[17] With all of this in mind, I will now address the five issues in relation to the record.

**Issue 1 - Is the record, as produced by the Respondent on March 2, 2026 (the “Amended Record”), accurate and complete?**

[18] The Amended Record as produced on March 2, 2026, is not complete and further inclusions and edits are necessary.

**Issue 2 - If no, what further documents need to be included or removed to ensure a complete record?**

[19] The Court has reviewed the thorough submissions of the parties – both those filed before the motion, the oral submissions made at the motion, and the written submissions filed on May 1, 2026. Though the Respondent may have already addressed some of these items, the following list is what the Respondent is to do to complete the record:

1. Ensure that all hyperlinked documents that are included in the submissions of the Applicant and Dr. Gilin are produced in the record;
  - a. For greater clarity, the Respondent is to make best efforts to obtain a copy of the hyperlinked material. If a hyperlink is broken, the Respondent is to enquire as to whether the Applicant can assist in providing a copy of the hyperlinked document. If the document cannot simply be obtained, the Respondent is to make a note of this in the index of the record to show the document could not simply be located.
2. Obtain fulsome and accurate versions of PDFs where information had gone missing – specifically the reactivation applications noted at Tab B(2) and Tab C(1) of the Amended Record.

3. The attachments to the email of November 30, 2023 (Tab C(1) of the Amended Record) all be included in the same Tab to ensure it is clear the attachments that formed part of this email.
4. As conceded in their May 1, 2026 letter to the Court, include the hearing notes of Ms. Dorcas Seun-Salami in the record.

[20] In response to the Applicant’s concern that there are other “minor errors” in the record, any typographical errors where documents are possibly mislabelled or dates are wrong should be addressed in the parties submissions as part of the Judicial Review. No changes to document descriptions or dates need to be addressed at this time. The key issue for this Court to decide is what documents are to be included in the record. The above outlines that and the Court will not be weighing in on how documents should be ordered or described.

[21] To be clear, the record will be all those documents included in the Amended Record filed with the Court via USB on March 2, 2026, with the above-noted items outlined in paragraph 19 of this decision also being corrected and/or included.

**Issue 3 - Will the hearing notes prepared by Ms. Dorcas Seun-Salami form part of the record?**

[22] As outlined above, these notes are to be included in the record.

**Issue #4 - Will the hearing notes prepared by Ms. Shannon Morrison form part of the record?**

[23] The notes as prepared by Ms. Shannon Morrison are not to be included in the record.

[24] In an affidavit sworn on March 17, 2026, Ms. Morrison gave evidence that she typed notes on her laptop at the Senate Executive Committee meeting of May 8, 2025 for the express purpose of compiling meeting minutes. The notes were not available to the Senate Executive Committee prior to the Committee making its decision on May 9, 2025.

[25] Instead, Ms. Morrison distilled the notes to draft meeting minutes and only provided this draft to the Senate Executive Committee's Chair on July 28, 2025 – over two months after the Committee issued its decision to the Applicant.

[26] Justice Brothers in *Nova Scotia Union of Public & Private Employees, Local 13 v. Halifax Regional Municipality*, 2021 NSSC 171, specifically addressed the issue of notes forming part of a record. At paras 32 and 33 she stated:

[32] The courts have considered the question of notes forming part of a record. While made in the context of tribunal members' notes, the comments of Bryson, J.A. in *Li v. Jean*, 2012 NSCA 125, are relevant, in that he aptly points out that notes are not a verbatim account of events, as is a transcript. In *Li*, both practical and legal aspects were considered in relation to the question of whether a decision-maker's notes should be part of the record.

In *Li*, the appellant was seeking to have notes taken by a member of the Labour Standards Tribunal added to the record on the grounds of alleged errors or omissions in the recording of the hearing. Justice Bryson said that one of the practical issues was that the notes of a judge or a panel member are “almost never a word-for-word record of what occurs in court. Moreover, they are not intended to be that kind of record” (para. 16).

[33] Justice Bryson went on to cite the Court of Appeal’s decision in *Yorke v. Northside-Victoria District School Board*, 1992 NSCA 80:

[3] The apparent purpose in requiring notes to be delivered up as part of the record of the proceedings is the assumption that the notes are a record of the evidence taken in the absence of a certified transcript of the proceedings. In my opinion the notes of a Board member are not a proper record of the evidence as the notes are not a verbatim record of what a witness stated under oath and are therefore likely inaccurate and unreliable. Secondly, the notes may contain tentative observations of the Board member which the Board member may subsequently decide were not well founded. Therefore, the notes could be misleading. Thirdly, the notes of a Board member are personal notations of the member made during the hearing. In short, the notes are a personal and unreliable record of the evidence. As a general rule, handwritten notes would serve no useful purpose for a superior court when reviewing a Board decision. [Emphasis added by court in *Li*]

[27] The Applicant says that this case is distinguishable because she is looking to have “official minutes of the Senate Appeal hearings introduced.” With respect to the Applicant, she did not request minutes, she requested “the hearing notes taken by Secretary of Senate Ms. Shannon Morrison for the University at the May 8, 2025 hearing of the Senate Executive Committee (see para 3 of her written submissions filed on February 13, 2026.) In addition, her Notice of Motion simply requests “material that was before the Senate Executive Committee.”

[28] It is clear the minutes were not in front of the Senate Executive Committee. It is also clear that Ms. Morrison’s notes were not in front of the Senate Executive Committee. With the greatest respect to the Applicant, I disagree that the case of

*Nova Scotia Union of Public & Private Employees, Local 13 v. Halifax Regional Municipality* is distinguishable.

[29] The Applicant has referenced the case of *Ford v. University of Ottawa*, 2022 ONSC 6828. In that case, a student was appealing his grade review to the Senate Appeal Committee. At para 49, the court stated:

[49] He received the following reasons for decision from the SAC five days later which read:

Good day,

After having considered your case at its meeting of February 12th, 2021, the Senate Appeals Committee decided to dismiss your appeal having found no justification for rescinding the decision of the Faculty of Health Sciences. The Faculty conducted a grade review in accordance with the procedures outlined in Academic Regulation 10.3 and made no errors in this respect. In reaching this decision, the Committee took into account your written and oral submissions, your supporting documentation, and the written representations made by the Faculty.

Please note that the decisions of the Senate Appeals Committee are final and binding.

Best regards,

After the application for judicial review was launched, the SAC disclosed its minutes (the “Minutes”) of the meeting of February 12, 2021, which gave a more detailed description of its decision. The Applicant submits that the Minutes mischaracterized him as not “necessarily disput[ing] the facts”. The Minutes referred to the Applicant’s argument that he could not be fairly evaluated after only 52.5 hours of clinical time but did not explain why this submission was rejected.

[30] In this case the decision was communicated in a brief email. The Senate Appeals Committee then supplemented this decision by disclosing its minutes that it said, gave a more detailed description of the decision.

[31] I will reiterate that the motion before me is for the record to include all the material that was before the Senate Executive Committee. It is clear the notes of Ms. Morrison and any minutes generated at some point after July 28, 2025, were not in front of the Senate Executive Committee. As such, should the Applicant have wished these material(s) be included she should have brought a motion to adduce fresh evidence pursuant to Rule 7.28. This is in keeping with Justice Brothers decision in *Nova Scotia Union of Public & Private Employees, Local 13* highlighted above, and specifically paragraphs 35-39, wherein she explained that anything that was not before the decision-maker nor played any role in the decision itself, would need to be included pursuant to Rule 7.28, and not as part of the record.

[32] The notes of Ms. Morrison do not form part of the record.

**Issue #5 - How should the record be produced, either electronically or in paper form?**

[33] Given the issues that have arisen with fillable PDFs not properly populating and hyperlinks being broken or inaccessible, the only method of ensuring the material that makes up the record is properly before the Court, is to have the Respondent file a paper record. This will further ensure the record stays complete

and there are no further technological issues. What the record should include has already been outlined above.

## **Conclusion**

[34] This preliminary motion was heard to address what should form part of the record for this Judicial Review and how that record should be produced – either electronically or in paper form.

[35] Various issues were raised with the documents and the electronic versions of the documents. Given these issues, the best way to ensure the record stays complete and true and accurate is to have a paper record filed that addresses/includes the following:

1. The entirety of the March 2, 2026 Amended Record but with the following additions and/or corrections:
  - a. That all hyperlinked documents that are included in the submissions of the Applicant and Dr. Gilin be printed and produced (other than any duplicates the Applicant has noted);
  - b. For any broken hyperlinks, the Respondent is to enquire as to whether the Applicant can assist in providing a copy of the

hyperlinked document but if the document cannot be obtained, the Respondent is to make a note of this in the index of the record to show the document could not be located.

- c. Obtain fulsome and accurate versions of PDFs where information had gone missing – specifically the reactivation applications noted at Tab B(2) and Tab C(1) of the Amended Record.
- d. The attachments to the email of November 30, 2023 (Tab C(1) of the Amended Record) will all be included in the same Tab to ensure it is clear the attachments that formed part of this email.
- e. The hearing notes of Ms. Dorcas Seun-Salami are to be included in the record.

[36] The Respondent is to prepare an Order outlining same and proceed to produce the paper Record.

[37] The Respondent has requested costs for this motion, payable forthwith. Given the record that was filed on October 24, 2025, contained omissions and given the Amended Record filed on March 2, 2026, continued to have omissions and errors, I find that the Respondent was not successful in having the Applicant's motion dismissed.

[38] Having said that, the Applicant requested some items, specifically the notes of Ms. Morrison, that I declined to order be included/produced. I also did not require a reordering or changes to the description of items in the record.

[39] Overall, I felt the parties worked well together to try and come up with a fulsome and accurate record and their efforts have allowed this matter to move forward to a hearing and fill the holes that previously existed in the record. Given this and the divided success, the parties will bear their own costs on this motion.

Kelly, J.