Court File No. 433/02 and 25/03
Date: January 19, 2004

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

DUNNET, FERRIER and EPSTEIN JJ.

IN THE MATTER OF the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31

Court File No. 433/02	)	
B E T W E E N:	)	
	)	
MINISTRY OF NORTHERN DEVELOPMENT AND MINES	)	*Kim Twohig* for the Applicant
Applicant	)	
- and -	)	
	)	
TOM MITCHINSON, Assistant Commissioner, and JOHN DOE, Requester	)	*William S. Challis* for the Respondent Tom Mitchinson, Assistant Commissioner
Respondents	)	
	)	
A N D B E T W E E N:	)	
	)	
Court File No. 25/03	)	
	)	
MINISTRY OF NORTHERN DEVELOPMENT AND MINES	)	
Applicant	)	
- and -	)	
	)	
TOM MITCHINSON, Assistant Commissioner, and JOHN DOE, Requester	)	
Respondents	)	HEARD: September 23, 2003

DUNNET J.:

[1] The Ministry of Northern Mines and Development seeks to have Orders PO-2028 and PO-2084 set aside on the ground that the respondent Tom Mitchinson, Assistant Information and Privacy Commissioner, misinterpreted the meaning of the words "advice or recommendations" in section 13 of the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 (the Act), by which the Ministry was ordered to disclose portions of records consisting of project evaluation reports.

BACKGROUND

Order PO-2028

[2] The requester sought access to records relating to a Northern Ontario Heritage Fund project involving a $1.5 million contribution to the Northern Ontario Tourism Marketing Corporation for the year 2000. The request encompassed the funding application and government reviews, evaluations and approvals.

[3] The Ministry identified 28 responsive records and provided the requester with access to 24 records in their entirety and portions of two other records. The requester appealed the Ministry's denial of access to the Commissioner. Following mediation, the only remaining issue was the application of the section 13(1) exemption to the undisclosed portions of four pages of one record.

[4] At the adjudication stage, the Commissioner sent a notice of inquiry to the Ministry inviting submissions on the issues raised, which were then forwarded to the requester. The requester chose not to make representations.

[5] The Ministry's submissions were that the entire record was exempt under section 13(1) of the Act, because it suggests a specific course of action whether or not to fund the project. In the alternative, the severed portions of the record constitute "advice", because the potential issues, funding options, and pros and cons portions of the record contain the implied suggestion that the decision-maker should take these matters into consideration in reaching a decision.

[6] The Commissioner rejected these arguments. With reference to the first submission, he found that the portions of the record already disclosed constitute mere information and do not advise or recommend anything, nor would they allow one to accurately infer any advice or information actually given.

[7] With reference to the second submission, the Commissioner canvassed previous orders, which held that the options and pros and cons portions of a record may or may not include "advice or recommendations", depending on the circumstances of the case.

[8] The Commissioner stated that the content of the record must be assessed in light of the context in which the record was created and communicated to the decision-maker. If disclosure of any portion of the record would reveal actual advice, as opposed to disclosing mere information, then section 13(1) applies.

[9] Applying this approach to the case at hand, the Commissioner found:

> (i) that the description of the options is mere information stating the factual component of each option broken down into various pre-determined categories;

(ii) these descriptions contain no information that could be said to advise the Board on the decision it should reach, nor would disclosure allow one to accurately infer any advice given;

(iii) the pros and cons portion does not contain any explicit advice, and there is no statement recommending that a particular option be chosen or is preferred;

(iv) considered as a whole, and in the context of the roles played by the Ministry staff and the Board, the pros and cons would not permit inferences to be drawn as to the nature of any advice or a suggested course of action; and

(v) the severed portions of the record do not qualify as "advice or recommendations" within the meaning of section 13(1) of the Act.

[10] The Commissioner held that the undisclosed portions of the record were not exempt and ordered them disclosed to the requester.

Order PO-2084

[11] The requester sought access from the Ministry to all reports, discussion papers and evaluations of the proposal to create the Canada Ecology Centre (CEC); CEC's most recent application to the Northern Ontario Heritage Fund for additional funding, together with all reports, briefing notes, papers, memos, letters, faxes and e-mails discussing, reacting to, or evaluating the application/request and all reports evaluating the performance of CEC and/or its prospects for the future.

[12] The Ministry identified 393 responsive records and issued a decision to the requester, providing him with access to certain records. The requester appealed the decision of the Ministry to deny access to the remaining records.

[13] The Ministry reconsidered the request and issued a revised decision granting access to certain, but not all, of the records identified. At the adjudication stage, the Commissioner sent a notice of inquiry to the Ministry and 12 of the affected parties setting out the facts and issues and inviting representations.

[14] The Commissioner upheld the Ministry's decision to deny access to a number of records. He found that no exemptions applied to all or portions of the remaining records and ordered the Ministry to disclose the records to the requester.

[15] The Ministry's position was that the records were prepared by an employee of the Regional Economic Development Branch of the Northern Development Division of the Ministry and were

submitted to the General Manager, Northern Ontario Heritage Fund Corporation, for the sole purpose of assisting the Board of Directors in rendering a decision as to whether or not to fund the project.

[16] The Commissioner observed that section 13(1) of the Act is designed to protect the free flow of advice and recommendations in the deliberative process of government decision-making and policy-making. Further, the purpose of the exemption is to ensure that persons employed in the public service are able to advise and make recommendations freely and frankly.

[17] The Commissioner also observed that in Order PO-2028 involving the same parties, he had rejected the Ministry's argument that "advice" should be broadly defined to include information, notification, cautions or views, where these relate to a government decision-making process.

[18] He referred specifically to Order PO-2028, where he stated:

> A great deal of information is frequently provided and shared in the context of various decision-making processes throughout government. The key to interpreting and applying the word "advice" in s. 13(1) is to consider the specific circumstances and to determine what information reveals actual advice. It is only advice, not other kinds of information such as factual, background, analytical or evaluative material, which could reasonably be expected to exhibit the free flow of expertise and professional assistance within the deliberate process of government.

[19] The Commissioner remarked that in Order PO-2028, he rejected the Ministry's position involving a similar record with respect to potential issues, funding options, and pros and cons for each option.

[20] The Commissioner held that the parts of the records that refer to potential issues and identify options, including pros and cons, do not constitute advice or recommendations, nor would their disclosure allow one to accurately infer any such advice or recommendations. For that reason, they do not qualify for exemption under section 13(1). He went on to find, however, that one of the records included a page that consisted of a clearly stated recommendation, which qualified for exemption.

SECTION 13

[21] Section 13 of the Act provides:

> 13.(1) A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

STANDARD OF REVIEW

[22] The Ministry's position is that the decision of the Supreme Court of Canada in *Barrie Public Utilities v. Canadian Cable Television Assn.* (2003), 225 D.L.R. (4th) 206 (*Barrie Public Utilities*) at 218-219 governs the standard of review to be applied in this case where the issue is a pure question of statutory interpretation. Accordingly, the decision of the Commissioner should be reviewed on a standard of correctness. Deference to the decision-maker is called for only if it is in some way more expert than the court and the question under consideration is one that falls within the scope of its greater expertise.

[23] The Ministry submits that the phrase "advice or recommendations" has no special technical meaning and its interpretation does not call upon any expertise in balancing competing interests. It is a pure question of statutory interpretation that is within the province of the judiciary.

[24] Contrary to the position of the Ministry, this court has consistently applied the reasonableness standard of review to the Commissioner's determinations under the section 13 exemption. See *Ontario (Human Rights Commission) v. Ontario (Information and Privacy Commissioner)* (25 March 1994), [unreported] (*Human Rights Commission*); *Ontario (Ministry of Consumer and Commercial Relations) v. Fineberg* (21 December 1995), [unreported], leave to appeal to C.A. refused, [1996] O.J. No. 1838 (*Fineberg*); *Minister of Health and Long Term Care v. David Goodis*, [2000] O.J. No. 4944, (14 November 2000); *Ontario (Children's Lawyer) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 3522, (14 August 2003) (*Children's Lawyer*).

[25] In *Children's Lawyer* at paras. 110-118, this court applied the pragmatic and functional approach and affirmed the reasonableness standard for the Commissioner's section 13 determinations, referring to the Commissioner's greater expertise in interpreting the Act:

> [113] ... Although at bottom, the question of whether section 13 applies to the records in the office of the CLO [Children's Lawyer for Ontario] that pertain to a particular case for a particular client, is a question of statutory interpretation, that issue ... must be informed by an understanding of the entire Freedom of Information/Privacy regime, an understanding which the Commissioner and not the court, brings to the table.
>
> ...
>
> [115] The expertise of the Commissioner is a very persuasive factor weighing on the side of deference. His experience in balancing the government privacy/public right to know conflict is at the heart of the issue.
>
> [116] The third factor is the purpose of the Act as a whole and the provision in particular. We return to *Big Canoe [Ontario (Attorney General v. Big Canoe)* (2002), 220 D.L.R. (4th) 467 (Ont. C.A.)] on the first point: The broad intention of the Act is to offer transparency

> to government functioning with exceptions where the interests of public knowledge are overbalanced by other concerns. The provision itself is an effort to put into words one of those `other concerns': the need for government privacy for certain documents containing advice. The question at issue is whether, viewed in the entire context of FIPPA and the rights of the clients of the CLO, this provision can apply against them. The balancing of such issues engaged the expertise of the Commissioner.
>
> [117] The final factor is the nature of the problem, which can be described as an issue of statutory interpretation, (normally the court's strong suit) in the context of this comprehensive and complex regime which requires, as A. Campbell J. put it, `a delicate balance'; `sensitivity' and `expertise'.
>
> [118] In the light of these authorities, and balancing the factors, the court should review this question, made within the Commissioner's expertise, on a standard of "reasonableness". The question we must ask ourselves is whether the Adjudicator's interpretation was reasonable. The issue is not whether we would have read it as he did. It is whether what he decided is reasonably supported by the kind of analysis mandated by the modern rule as to the interpretation of statutes discussed earlier.

[26] The Ministry contends that on this question of pure statutory interpretation, there is no need to balance competing factors. To the contrary, in *Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 at 400-402, the Court of Appeal held that reasonableness is the appropriate standard for reviewing the interpretation of provisions involving the ordinary meaning of words of common usage under the Commissioner's home statute, because such a question engages the Commissioner's expertise in balancing the need for access and the right to protection of privacy.

[27] The Supreme Court of Canada has held in *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982 at para. 34 that once a broad relative expertise has been established, the court is sometimes prepared to show considerable deference, even in cases of highly generalized statutory interpretation, where the tribunal is interpreting its home statute.

[28] The Supreme Court of Canada has also held that reasonableness is the appropriate standard where a permanent, specialized tribunal addresses questions under its enabling statute, which call for a balancing of competing interests. Because the statute does not always admit of one correct meaning, its interpretation should logically be left to the tribunal to decide, with a view to promoting the statute's public policy interests informed by its specialized perspective. See *National Corn Grower's Assn. v. Canada (Canadian Import Tribunal)* (1990), 74 D.L.R. (4th) 449 at 456-458.

[29] Further, in *Ontario (Workers' Compensation Board) v. Ontario (Information and Privacy Assistant Commissioner* (1998), 164 D.L.R. (4th) 129 at 139-140 (*Workers' Compensation Board*), the Court of Appeal determined that deference is warranted with respect to the Commissioner's interpretation of exemptions under the Act, because he is applying expertise in balancing the need for access and the right to protection of privacy.

[30] In *Workers' Compensation Board*, the court cited with approval the majority judgment of this court in *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767, where we held at 782, 783:

> ... the commissioner is required to develop and apply expertise in the management of many kinds of government information, thereby acquiring a unique range of expertise not shared by the courts. The wide range of the commissioner's mandate is beyond areas typically associated with the court's expertise. To paraphrase the language used by Dickson C.J.C., as he then was, in *New Brunswick Liquor Corp. v. Canadian Union of Public Employees, Local 963*, [1979] 2 S.C.R. 227, the commission is a specialized agency, which administers a comprehensive statute regulating the release and retention of government information. In the administration of that regime, the commissioner is called upon not only to find facts and decide questions of law, but also to exercise an understanding of the body of specialized expertise that is beginning to develop around systems for access to government information and the protection of personal data. The statute calls for a delicate balance between the need to provide access to government records and the right to the protection of personal privacy. Sensitivity and expertise on the part of the commissioner is all the more required if the twin purposes of the legislation are to be met.
>
> The commission has issued over 500 orders in the five years since its creation [now 4000], resulting in an expertise acquired on a daily basis in the management of government information.

[31] Contrary to the submissions of the Ministry, the Supreme Court of Canada applied the correctness standard in *Barrie Public Utilities* because the presence of a statutory right of appeal from a decision of the Canadian Radio-television and Telecommunications Commission suggested a more searching standard of review.

[32] In that case, the majority of the court determined that the tribunal's expertise lay in the regulation, supervision and implementation of telecommunications policy. However, the interpretation of the phrase "the supporting structure of a transmission line" did not engage the tribunal's special expertise. Rather, it was a question of general importance to the telecommunications and electricity industries. The question, therefore, was jurisdiction-limiting and well within the relative expertise of the court.

[33] Here, by contrast, the interpretation of section 13 of the Act and in particular, the identification of the types of information intended to be covered by the words "advice or recommendations" involves a balancing of the competing interests of access to information and confidentiality and thus, falls squarely within the Commissioner's expertise. Accordingly, in my view, the standard of reasonableness should apply.

ANALYSIS

[34] It is asserted by the Ministry that the Commissioner erred in his interpretation of "advice and recommendations" by narrowing the definition to the extent that the words mean the same thing.

[35] The words of a statute should be interpreted in accordance with its overall purpose and within their statutory context. In the present case, the Ministry relies on the presumption against tautology - that is, as a matter of statutory interpretation, it is presumed that the legislature avoids superfluous words, and every word has a specific role to play in advancing the legislative purpose. It is submitted that in section 13(1) of the Act, the legislature must have intended "advice" to have a broader meaning than "recommendations".

[36] This was the conclusion reached by the Federal Court of Appeal in *3430901 Canada Inc. v. Canada (Minister of Industry)* (C.A.), [2002] 1 F.C. 421 (*Telezone*), where Telezone Inc. and its successor, 3430901 Canada Inc., applied to the Minister of Industry for a licence to provide wireless telephone services. Certain licences were issued, but not to Telezone.

[37] Telezone requested Industry Canada to disclose information about the decision-making process. The request was, in large part, refused and Telezone complained to the Information Commissioner, who investigated the refusal and recommended that most of the information be disclosed.

[38] The Minister continued to withhold material relating to the weight assigned to various criteria by which the licence applications had been assessed. The Information Commissioner and Telezone applied to the Federal Court to review the Minister's refusal and the trial judge dismissed the applications.

[39] In dismissing the appeals, the court exempted from disclosure the percentage weightings ascribed by the working group to various criteria for evaluating the licence applications. Further, the court stated that the federal exemption should be reserved for the opinion, policy, or normative elements of advice, and should not be extended to the facts on which it is based.

[40] The Ministry urges this court to adopt the findings of the court in Telezone in relation to section 21(1)(a) of the *Access to Information Act*, R.S.C. 1985, c. A-1 and apply them to section 13(1) of the Act as follows:

> (i) by exempting "advice and recommendations" from disclosure, Parliament must be taken to have intended the former to have

> a broader meaning than the latter; otherwise, it would be redundant (para. 50);
>
> (ii) "advice" includes an expression of opinion or information that is predominantly normative rather than merely factual (paras. 52, 57);
>
> (iii) a record contains "advice" even if it was only intended to assist participants in the decision-making process to formulate the advice or recommendations that they would ultimately give to the final decision-maker (paras. 59-64); and
>
> (iv) the presentation of a range of options constitutes "advice" within the meaning of the exemption (paras. 61-64).

[41] Given that the federal statute, like the Act, contains neither a privitive clause, nor a statutory right of appeal, the Ministry asserts that the findings are persuasive with respect to section 13.

[42] Their submission is that "advice" must mean more than just information of a factual nature. It does not need to contain a suggested course of action that may be accepted or rejected by the decision-maker, but if it is intended to assist the decision-making process, the statement will constitute "advice".

[43] In *Telezone*, the court found it untenable to characterize as essentially factual the documents emanating from members of the working group. The reason for the group's informing the selection panel, and ultimately the Minister, of the bases of the evaluations in Telezone, was to suggest to the Minister the appropriate rankings of the licence applications. The percentages represented the working group's view, approved by the Assistant Deputy Minister, of the relative importance of various government objectives being pursued through the allocation of the licences. The court also found exempt a range of policy options that implicitly contained the writer's view of what the Minister should do (at paras. 48-58).

[44] In the present case, the Commissioner found that disclosure of the listed options and associated pros and cons would not allow one to accurately infer any suggested course of action.

[45] Importantly, although the court in *Telezone* reviewed the Minister's refusal to disclose records on a standard of correctness, it was held at para. 40:

> ... the fact that courts have applied a deferential standard of review under Ontario's freedom of information statute (see, for example, John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767 (Div. Ct.)) has little relevance, if any, to the federal access statute because, as already noted, under the Ontario Act, the decisions being reviewed are those of the independent Information Commissioner, not of the institution head.

[46] The Ministry argues that the case of *College of Physicians of British Columbia v. British Columbia (Information and Privacy Commissioner)*, [2002] B.C.J. No. 2779 (C.A.) (*College of Physicians of British Columbia*) is persuasive because the wording of the provincial statute is similar.

[47] The College of Physicians and Surgeons of British Columbia brought an appeal from the dismissal of its application for judicial review of a decision of the Information and Privacy Commissioner ordering it to disclose expert medical reports obtained in the investigation of a complaint. The appeal was allowed and the medical reports were found to be exempt from disclosure on the basis that they provided advice to the College as a public body.

[48] The Commissioner had determined that the reports were not "recommendations" because the medical experts did not set out alternatives or recommend courses of action. On appeal, the court held that the Commissioner erred in his interpretation of the word "advice" by requiring that the information must include a communication about future action and not just an opinion about an existing set of facts.

[49] The court found that "advice" should not be given a restricted meaning. Rather, it should be interpreted to include an opinion that involves exercising judgment and skill in weighing the significance of matters of fact (*ibid.* at para. 114).

[50] In the present case, the Ministry submits that the records in issue are expressions of opinion and a weighing by experienced staff of the significance of certain facts. The Ministry states that the records constitute "advice" even if they do not explicitly or implicitly recommend which of the options should be selected.

[51] In addition, the pros and cons are a risk benefit analysis by those whose job it is to apply their skills to evaluate different courses of action. The options provide the decision-maker with an analytical framework, which assists them in understanding the potential consequences of each decision and thus, to make an informed decision. When a course of action is suggested, the "advice" becomes a "recommendation".

[52] With respect, I do not find the case of *College of Physicians of British Columbia* to be persuasive. There the court based its decision on the rule of statutory interpretation against tautology, as well as on the use of parallel language in that province's cabinet records exemption, which is not found in the equivalent exemption under Ontario's statute.

[53] Further, the court held that "advice" should be interpreted to include an opinion that involves exercising judgment and skill to weigh the significance of matters of fact, including expert opinion on matters of fact on which a public body must make a decision for future action (*ibid.* at para. 113).

[54] The court stated:

> ... Two of the experts expressly commented on whether the evidence was sufficient to support the Applicant's allegation, and one provided

> his view on whether Dr. Doe's explanation was "acceptable and reasonable". Thus, the reports contain advice on whether the College should take further action, bringing them within the meaning of "advice" as found by the Commissioner (*ibid.* at para. 114).

[55] By contrast, here the Commissioner found that the information consists of the factual component of options broken down into pre-determined categories and the pros and cons associated with each contain no information that could be said to provide any advice on making a decision, nor would disclosure allow one to accurately infer any such advice or recommendation.

[56] Unlike the federal and British Columbia legislation, section 13 of the Act does not contain the verb "developed" and thus, does not extend the exemption to information generated in the process leading up to the giving of advice or recommendations.

[57] The Ministry finds support for their position in *Weidlich v. Saskatchewan Power Corp.*, [1998] S.J. No. 133 (Q.B.) (*Weidlich*) at paras. 9-12 and 22 where the court exempted from disclosure reports summarizing the opinions of focus group participants on a variety of issues, including rate structures, that could reasonably be expected to disclose analyses and policy options developed for SaskPower. The court accepted that the right of access should be the paramount consideration under access legislation generally, but there are exceptions put in place by the legislature, which must be given effect.

[58] I find that *Weidlich* is of little assistance, because the provision at issue was differently worded than section 13. It exempted "advice, proposals, recommendations, *analyses or policy options* [emphasis added] developed by or for a government institution ...". The court held that the reports could not logically be categorized as being other than advice and analyses. The suggestion in *Weidlich* that advice in commercial usage may signify information or intelligence appears to be incompatible with a freedom of information regime for government record holdings.

[59] A provision of a statute may be amenable to more than one reasonable interpretation. Further, a contrary interpretation by a court of another jurisdiction, which is not binding on a tribunal, does not render the tribunal's decision under its own administrative regime unreasonable.

[60] It is asserted by the Ministry that one of the purposes of the exemption for advice or recommendations is to encourage the free and frank flow of communications within government departments, in order to ensure that the decision-making process is not subject to the kind of intense scrutiny that would undermine the ability of government to discharge its essential functions. See *Canadian Council of Christian Charities v. Canada (Minister of Finance) (T.D.)*, [1999] 4 F.C. 245 (*Christian Charities*) at paras. 30, 31. The Ministry's position is that the Commissioner's interpretation of section 13(1) hampers this goal.

[61] I note that in *Christian Charities*, the court states at para. 32:

> On the other hand, of course, democratic principles require that the public, and this often means the representatives of sectional interests,

> are able to participate as widely as possible in influencing policy development. Without a degree of openness on the part of government about their thinking on public policy issues, and without access to relevant information in the possession of government, the effectiveness of public participation will inevitably be curbed.

[62] In my view, the Ministry seeks to ascribe to the word "advice" an overly broad meaning tending to eviscerate the fundamental purpose of the statute to provide a right of access to information under the control of institutions, in accordance with the principles that information should be available to the public and exemptions from the right of access should be limited and specific (s. 1(a)(i), (ii) of the Act).

[63] Section 13(2) of the Act lists various types of information, such as factual material, statistical surveys and certain reports, which are not to be protected under section 13(1). They are not intended, as the Ministry would suggest, to limit what would otherwise have been a very broad interpretation of the exemption at section 13(1).

[64] The Ministry submits that the Commissioner has interpreted the words "advice" and "recommendations" to have the same meaning. I disagree with their position. The Commissioner states that the words have similar meanings in the context of section 13(1) of the Act and should be interpreted to mean information that reveals a suggested course of action that will ultimately be accepted or rejected by its recipient during the deliberative process of government policy and decision-making. Moreover, in *Fineberg*, this court has endorsed as reasonable the interpretation adopted by the Commissioner.

[65] In *Human Rights Commission*, this court has also upheld the Commissioner's interpretation and application of section 13(1). There he found that a memorandum from an investigating human rights officer to her supervisor seeking direction as to how an investigation should be handled and the response of the supervisor did not qualify under section 13, because neither set out any suggested course of action which could be accepted or rejected during the deliberative process.

CONCLUSION

[66] In *Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403 at paras. 61-63, La Forest J. described the importance of access to information legislation to the proper functioning of a democracy:

> The overarching purpose of access to information legislation, then, is to facilitate democracy. It does so in two related ways. It helps to ensure first, that citizens have the information required to participate meaningfully in the democratic process, and secondly, that politicians and bureaucrats remain accountable to the citizenry. ...

> Rights to state-held information are designed to improve the workings of government; to make it more effective, responsive and accountable.

[67] The Commissioner's interpretation of the meaning of section 13(1) followed a long line of previous orders, which held that the terms "advice" and "recommendations" have similar meanings. The Commissioner observed that ordinary dictionary meanings use the words "advice" and "recommendation" to define each another. Further, the legislative history set out in the Williams Commission Report (*Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (Toronto: Queen's Printer, 1980) uses the words "advice" and "recommendations" interchangeably.

[68] The Commissioner also referred to the policy rationale in the Williams Commission Report for including the exemption and the fact that the exemption was not designed to protect analytical discussion of factual material or the assessment of various options relating to a specific factual situation that does not offer specific advice or recommendations.

[69] In view of these findings, there is no need to apply the presumption against tautology. Alternatively, there are ample indicators of legislative meaning to suggest that the presumption is rebutted and the Commissioner's interpretation complies with the legislative text, promotes the legislative purpose, and is reasonable.

[70] Accordingly, the applications will be dismissed.

DUNNET J.
I agree: FERRIER J.
I agree: EPSTEIN J.

RELEASED: January 19, 2004

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Applicant

- and -

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A N D B E T W E E N:

Court File No. 25/03

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REASONS FOR JUDGMENT

DUNNET J.

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