ONTARIO LABOUR RELATIONS BOARD

3642-08-U Laurentian University Faculty Association, Applicant v. **Laurentian University**, Responding Party.

BEFORE: Patrick Kelly, Vice-Chair.

APPEARANCES: David Wright, Linda St. Pierre and Dr. James Ketchen for the applicant; Jack Braithwaite, Sara D. Kunto, Denise A. Ouellette, Lise Dutrisac and Lisetta Chalupak for the responding party.

DECISION OF THE BOARD: June 7, 2010

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1. This is an application filed pursuant to section 96 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended.

Background

2. I issued a bottom line decision, dated April 27, 2010, part of which reads:

> 2. The issue for the Board is whether or not the mandatory limitations on the disclosure of personal information under the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 ("the *Privacy Act*") prevent the Board from issuing an order requiring the responding party to disclose to the applicant a copy of a document entitled Notice of Decision prepared pursuant to the responding party's Policy on a Respectful Workplace and Learning Environment.
>
> 3. The hearing in this matter proceeded by way of an agreed statement of facts and attached documents, as well as the parties' arguments.
>
> 4. This constitutes a bottom-line decision. I have determined that the *Privacy Act* does not prevent an order requiring the disclosure to the applicant of a copy of the Notice of Decision. That being the case, the responding party must, and is hereby directed, to provide the applicant with a copy of any Notice of Decision in which a member of the applicant's bargaining unit is a complainant or respondent under the responding party's Policy on a Respectful Workplace and Learning Environment.
>
> 5. My written reasons will follow.

3. This decision contains the reasons for the conclusion I reached in paragraph 4 set out above.

4. The agreed statement of facts upon which the parties relied reads as follows:

AGREED STATEMENT OF FACT

1. The Laurentian University Faculty Association ("LUFA") is the certified bargaining agent for a bargaining unit of all academic employees of Laurentian University ("the University").

2. LUFA and the University have been parties to a series of collective agreements respecting this bargaining unit. The current collective agreement is for the period from July 1, 2008 to June 30, 2011.

3. The University was first established and incorporated in 1960 under the laws of Ontario and is located in Sudbury, Ontario.

4. The University is one of two bilingual universities in Canada with more than 9,000 full-time and part-time students with objects and purposes to advance the learning and dissemination of knowledge as well as the intellectual, social, moral and physical development of its members and the betterment of society.

5. The University offers undergraduate programs, Master level programs and six doctoral programs.

6. The University has anti-discrimination and harassment policy known as the "Policy on a Respectful Workplace and Learning Environment" ("the Policy") which is overseen by the University's Human Rights Advisor. A copy of the Policy is attached as Appendix 1.

7. Article 3.15 of the current collective agreement between the parties protects members of the bargaining unit against discrimination, harassment, and bullying in the workplace. A copy of Article 3.15-is attached as Appendix 2. The Policy is explicitly referenced in Article 3.15.1 of the collective agreement which provides as follows:

"The Employer recognizes the need to provide an environment free from discrimination and harassment, including bullying. To that end, the Employer has established a Human Rights Office, headed by a Human Rights Advisor. The Union acknowledges the Board's Policy on a Respectful Workplace and Learning Environment. This policy will be used by the Employer in dealing with all incidents or alleged discrimination, harassment or bullying at Laurentian University."

8. From time to time members of the bargaining unit become involved in complaints under the Policy, either as complainants or respondents.

9. On or about 14 October, 2008 a Notice of Decision was prepared pursuant to Policy resulting from an investigation in response to harassment complaints made between two LUFA members against one another.

10. LUFA requested disclosure of the full investigation as well as the full Notices of Decision.

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> 11. In accordance with Article 6.12 of the Policy and the LUFA member complainants requesting a copy of the Notice of Decision be provided to the Union, the Union, accordingly, was provided with a copy of the Notice of Decision on signing a Confidentiality Agreement. The full investigation was not provided. See Appendix 3
>
> 12. Grievances have been filed by LUFA on behalf of its members with respect to issues arising from the results of investigations and conclusions in Notices of Decision under the Policy.
>
> 13. On or about 8 December, 2009 by way of a memo from the President of the University to the President of LUFA and the President of the Laurentian University Staff Union, the University revised its procedures, in part, for disclosure of documents under Article 6.12 of the Policy.
>
> 14. In particular, among other things, the revised policy included that the Union would now be initially notified of both the fact a complaint has been made by a union member or against a union member as well the name of the union member. See Appendix 4
>
> 15. At the hearing before the Board on 10 December, 2009, the parties agreed to put the following question before the Board for resolution of the issues between the parties raised in the instant Application:
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>> "Whereas the parties agree that the Notices of Decision under the Policy contains personal information, the parties request a decision from the Ontario Labour Relations Board as to whether the mandatory limitations on the disclosure of personal information under the Freedom of Information Protection of Privacy Act prevent the Board from issuing an order requiring the University to disclose a copy of the Notice of Decision to the Association.
>>
>> In the event that the Board determines the answer is in the negative to the above noted question, the parties request that the Board make its order either to disclose or not to disclose."
>
> 16. It is agreed and understood that the parties are strictly seeking a decision and order related to the above-noted question. As such, the Union is not seeking an unfair labour practice declaration and/or any remedy related to an unfair labour practice.

5. I adopt the abbreviations and acronyms used by the parties in their agreed statement of facts. I do not think it essential to reproduce in this decision the appendices upon which the parties relied. To the extent necessary, I shall describe the relevant content of those documents.

6. As is evident from the agreed statement of facts, what LUFA seeks from the University is a copy of every Notice of Decision issued by the University's Human Rights Advisor in circumstances where the underlying harassment and/or discrimination complaint has been initiated by or against a member of LUFA's bargaining unit. LUFA claims it is entitled to this information as the exclusive bargaining agent whether or not the bargaining unit member consents to its release to LUFA. Although the University made some revisions to the Policy in order to accommodate LUFA's stated need for information about discrimination and harassment

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complaints[1], its position is that, without the consent of the bargaining unit member complainant or respondent, it is constrained by the mandatory limitation on the disclosure of personal information under the *Freedom of Information and Protection of Privacy Act* ("the *Privacy Act*") to refuse to provide a copy of the Notice of Decision to LUFA. It has therefore refused to give this particular information to LUFA without the employee's consent. However, it was conceded by counsel for the University that in the event LUFA were to grieve any discipline imposed upon a LUFA bargaining unit member as a result of the investigative process pursuant to the Policy, LUFA would be entitled to a copy of the Notice of Decision as of right.

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The Policy

7. The Policy aims to protect students, staff, faculty and administrators from a variety of forms of discrimination and harassment. Any individuals who believe they are the victim of one or more of the Policy's defined forms of discrimination or harassment are entitled to contact the University's Office of Human Rights, and complete a written summary of the details of the incident. This gives rise to the initiation of an informal process of resolution, which may include mediation. If the informal process fails to result in a satisfactory resolution, the complainant may convert the matter to a formal complaint. The Human Rights Advisor has a discretion not to proceed with the complaint. If the complaint proceeds, it is subject to an investigation by a tripartite panel of internal investigators. Following the investigation, the panel completes a detailed written report to the Human Rights Advisor summarizing the results of the investigation, determining whether the Policy has been breached, and recommending remedies and/or corrective or disciplinary action if applicable. The Human Rights Advisor, in turn, completes a Notice of Decision summarizing the investigation panel's report, including a summary of the evidence "but only aggregate information that does not identify individuals" is included in the Notice of Decision: Article 6.12 of the Policy. The Human Rights Advisor must then review the Notice of Decision with the complainant and the respondent, and if applicable, provide a copy to the individual responsible to carry out any recommended corrective measures and remedies. Article 3.4 of the Policy specifically recognizes that any remedial or corrective/disciplinary action taken must be fair "and in accordance with the disciplinary measures within relevant collective agreements and University procedures."

8. The Policy contemplates that the respondent's bargaining agent will be provided a copy of the Notice of Decision if, and only if, the respondent so wishes and the bargaining agent's President signs a confidentiality agreement which sets out the authorized uses and disclosure of any information contain therein. LUFA takes issue with this aspect of the Policy. It wants the Notice of Decision in every case involving a LUFA bargaining unit complainant or respondent, regardless of the individual's consent. It does not, however, seek in this proceeding the more detailed investigation report prepared by the tripartite investigation panel.

A Trade Union's Right to Information Pursuant to Section 70

9. Section 70 of the Act reads:

> **70.** No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or

[1] Pursuant to an amendment to the Policy, the University is required to notify LUFA of the release of any Notice of Decision involving LUFA bargaining unit members.

> interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.

10. LUFA is "charged with the responsibility fairly to represent its members and to safeguard their rights under the collective agreement pursuant to its legal obligations under section [74] of the Act."[2] A trade union's ability to discharge its statutory duties to the bargaining unit members may be impaired where it lacks information in the possession of the employer concerning those members. Thus, the Board has repeatedly found that an employer must at least provide personal contact information about the employees in a bargaining unit to the authorized bargaining agent, if requested to do so, because otherwise the trade union's ability to communicate with its members is compromised. An employer that refuses to provide this kind of information risks being found to have interfered with the administration of the trade union or the trade union's representation of employees. See, for example, *Millcroft Inn Ltd.*, [2001] OLRB Rep. November/December 1426 and *The Alcohol and Gaming Commission of Ontario*, [2002] OLRB Rep. January/February 1 in which the Board ordered the employer to provide the trade union with the names, addresses and telephone numbers of the employees in the bargaining unit.

11. In *York University*, [2007] OLRB Rep. May/June 659 the Board went further, finding a violation of section 70 where the employer refused to provide the trade union with contact information concerning former employees (retirees) who had been past members of the bargaining unit, on the basis that the trade union might be, but not necessarily was, responsible for enforcing their pension benefit rights, which rights may or may not have derived specifically from the collective agreement between the parties. Moreover, the Board has gone beyond ordering the disclosure of mere contact information. In the *Ford Glass* case referred to in the second footnote of this decision, the Board directed the employer to provide the trade union a copy of a master benefit plan referenced in the collective agreement, because without ready access to this information, the trade union could not fulfill its representational role.

12. Counsel for the University argues that the Board's cases stand merely for the proposition that a trade union is entitled to basic employee information so as to facilitate its communication with the bargaining unit members. I disagree. Communication is only one possible objective. The *York University* and *Ford Glass* decisions suggest there is a broader rationale for the disclosure of workplace information to the bargaining agent.

13. Without providing an exhaustive list of the circumstances in which the trade union bargaining agent will reasonably require confidential information, the facts in this case give one circumstance in which the trade union is entitled to receive the information. It has a responsibility, with the University, to provide a harassment-free and to ensure a discrimination-free working environment. It is involved in responding to employees in its bargaining unit who have been subjected to harassment or discrimination such as would be described in the Notices of Decision. This is why it has a legal interest in receiving, and is entitled to, copies of the Notices of Decision.

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[2] *Ford Glass Limited*, [1986] OLRB Rep. May 624, at ¶6.

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14. I am persuaded, therefore, that LUFA's request for copies of each Notice of Decision, is clearly grounded in section 70 of the Act. LUFA needs that information, which is disclosed as of right to the complainant, the respondent and the individual responsible for taking corrective action, for the purpose of deciding whether or not it ought to file grievances to protect the interests of individual bargaining unit members, the bargaining unit as a whole, and/or the trade union as an institutional party. Indeed, LUFA has filed grievances in the past with respect to issues arising from the results of investigations and conclusions reached in Notices of Decision under the Policy. Apart from any application of the *Privacy Act*, LUFA is entitled under section 70 to a copy of each Notice of Decision.

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The Scheme of the *Privacy Act*

15. The *Privacy Act* is divided into five Parts, and is preceded by sections describing the statute's purposes and defining several terms. Section 1 reads:

> **1.** The purposes of this Act are,
>
> (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
>
> (i) information should be available to the public,
>
> (ii) necessary exemptions from the right of access should be limited and specific, and
>
> (iii) decisions on the disclosure of government information should be reviewed independently of government; and
>
> (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

16. Part I of the *Privacy Act* deals with administrative matters not relevant in this matter. Similarly, Part IV (Appeal) has no bearing here. Part V (General) too is largely irrelevant, except with respect to section 65 which deals with the application of the statute, and section 67 which governs conflict between the *Privacy Act* and confidentiality provisions in other statutes.

17. Part II (Freedom of Information) contains provisions concerning the rights of access of persons to the records in the custody or control of institutions such as the University, as well as the process for gaining such access. Part II also deals with the exemptions to those rights, including personal privacy exemptions under section 21.

18. Part III (Protection of Individual Privacy) deals with the collection and retention of personal information, its use and disclosure, personal information banks maintained by an institution, and the right of individuals to whom personal information relates to access and correct their personal information.

Does the *Privacy Act* circumscribe LUFA's entitlement to the requested information?

19. The University submits that LUFA is not entitled to disclosure of the contents of any Notice of Decision except with the consent of the respondent employee to a complaint under the Policy because unauthorized disclosure of such personal information would violate the *Privacy Act*. Counsel theorizes that personal information under the *Privacy Act* takes many forms, that some forms of personal information such as residential telephone numbers and addresses (referred to by counsel as "bread and butter" and/or "meat and potatoes" issues dealt with under the *Labour Relations Act, 1995*) may be disclosed appropriately without running afoul of any statutory prohibition, but some other forms of personal information are so inherently sensitive (for example, details of sexual harassment or the mental health of an individual) that they deserve the full protection of the *Privacy Act*, and in those latter cases, the *Privacy Act* trumps any other statute.

20. In support of his theory, counsel for the University refers to the following provisions of the *Privacy Act*: subsection 2(1)'s definition of personal information, subsections 17(1)(d), 21(1)(a) and (f), 21(2)(f), (h) and (i), 21(3)(b) and (g), 21(4) under Part II; subsections 42(1)(k) and paragraph (d) of section 49 under Part III; and section 67 under Part V. The provisions are reproduced at Appendix A of this decision.

21. Counsel also refers to a number of cases decided, in the main, by the Information and Privacy Commissioner of Ontario ("the Commissioner"), and one Ontario decision of the Divisional Court. All but one of the cases decided by the Commissioner deal with requests by individuals for information for records of an institution related to harassment investigations. The other was decided under the *Municipal Freedom of Information and Protection of Privacy Act*, and concerned a request for disclosure of information about proposals submitted to a municipality in response to a request for proposal to do restoration work on a historic railway station. The Divisional Court decision was concerned with a request for a copy of a report of the Ontario Provincial Police exonerating the conduct of several police officers. None of these cases involved the question of the entitlement of a trade union to personal information about its bargaining unit members, and are of limited assistance in the determination of the issue before me.

22. One of the arguments made by counsel for the applicant is that the *Privacy Act* has no application whatsoever to the information requested by LUFA.[3] Counsel points to subsections 65(6) and (7) of the *Privacy Act*, which read:

> **65.** (6) Subject to subsection (7), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:
>
> > 1. Proceedings or anticipated proceedings before a court, tribunal or other entity relating to labour relations or to the employment of a person by the institution.
> >
> > 2. Negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution between the institution and a person, bargaining agent or party to a proceeding or an anticipated proceeding.

[3] Counsel for the University made no counter arguments on this submission in the course of final argument.

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> 3. Meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest.
>
> (7) This Act applies to the following records:
>
> 1. An agreement between an institution and a trade union.
>
> 2. An agreement between an institution and one or more employees which ends a proceeding before a court, tribunal or other entity relating to labour relations or to employment-related matters.
>
> 3. An agreement between an institution and one or more employees resulting from negotiations about employment-related matters between the institution and the employee or employees.
>
> 4. An expense account submitted by an employee of an institution to that institution for the purpose of seeking reimbursement for expenses incurred by the employee in his or her employment.

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23. Counsel for LUFA also refers to three decisions which considered the above provisions. In *University of Windsor*, [2007] O.L.A.A. No. 108, a decision of a rights arbitrator, the trade union argued that the University of Windsor's ("the employer") publication of student evaluation teaching scores ("SET scores") on the Registrar's Student Information System contravened both the collective agreement and the *Privacy Act*. The scores were used by the employer in connection with promotion, tenure and renewal decisions affecting the employer's instructors. The arbitrator determined that the SET scores were a form of communication by the students about employment-related matters in which the employer had an interest. Consequently, by virtue of paragraph 3 of subsection 65(6), the *Privacy Act* was found not to apply to prevent the employer from publishing the SET scores.

24. The employer sought judicial review: *University of Windsor Faculty Assn. v. University of Windsor*, [2008] O.J. No 2003. Applying the standard of correctness with respect to the arbitrator's analysis of the *Privacy Act*, the Divisional Court found that the arbitrator's determination concerning subsection 65(6) was correct, and dismissed the employer's application for review.

25. *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2003] O.J. No. 4123 (C.A.) involved an appeal from an order of the Divisional Court dismissing an application for judicial review of a decision by the Commissioner. The Commissioner had ordered the production of certain documented recommendations of the Physician Services Committee, an advisory body to the Ministry of Health ("the Ministry") and the Ontario Medical Association ("the OMA"), presented to the Ministry in response to increased utilization of the provincial medical system. The Physician Services Committee was the creature of an agreement between the Ministry and the OMA, consisting of equal numbers of appointees of each party, whose mandate included advice concerning the changing role of physicians within the health care system and the monitoring of fee-for-service utilization. The Commissioner reasoned that, because there was no employer-employee relationship between the Government of Ontario and the members of the OMA, the records kept by the Physician Services Committee were not employment related or labour relations communications within the meaning of

paragraph 3 of subsection 65(6) of the *Privacy Act*., and therefore were required to be disclosed to the requestor. The Divisional Court upheld the Commissioner's decision. The Court of Appeal disagreed. It found that the records in question were communications about labour relations even though physicians are not employees of the Provincial Government. The Court reasoned that the ordinary meaning of labour relations "extends to relations and conditions of work beyond those relating to collective bargaining." (¶ 1)

26. Applying the principles set out in the above described cases, I find that subsection 65(6) applies in the circumstances of this proceeding, with the result that the *Privacy Act* has no application. My reasons are as follows. A Notice of Decision is a record within the meaning of subsection 2(1) of the *Privacy Act*. It is integral to the investigative process under the Policy and its goal "to promote a working and learning environment that is free of discrimination and harassment, to protect the health, safety and security of the University community, to outline rights, responsibilities and types of behaviour which fall within the scope of this policy, *and to outline procedures for handling and resolving complaints*." (emphasis added) The Notice of Decision is the summation of the investigation, and the final step in the resolution of the complaint. Its contents are shared with the main principals in the complaint, and with the person responsible for implementing any corrective action, remedies or changes in work directed in the Notice of Decision. It is, in short, a form of communication about labour relations or employment-related matters in which the "institution" – i.e., the University - has an interest, that interest being a workplace free of discrimination and harassment. Accordingly, the *Privacy Act* has no application to the Notice of Decision.

27. However, if the *Privacy Act* does apply to the Notice of Decision, I do not accept the University's argument concerning the application of subsection 17(1)(d) of the *Privacy Act*. Section 17 falls within Part II dealing with the public's right to access the records of institutions, of which the University is one of many. LUFA asserts section 70 of the *Labour Relations Act, 1995* as the basis for its entitlement to copies of the Notice of Decision, not any provision of the *Privacy Act* governing requests for information by the public. LUFA is asserting a labour relations right, grounded in the *Labour Relations Act, 1995*, as the exclusive bargaining agent to any and all Notices of Decision applicable to its members. Counsel for the University does not explain how disclosure of a Notice of Decision can reasonably be expected to reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute. Consequently, I find that section 17 of the *Privacy Act* is no impediment to the disclosure sought by LUFA in this case.

28. The responding party relies on section 21 of the *Privacy Act* to argue that disclosure to LUFA of the Notice of Decision in all cases amounts to an unjustified invasion of privacy. As counsel for the applicant points out, the Board rejected a similar argument based upon precisely the same statutory language contained in section 21 in a decision involving the application of section 14 of the *Municipal Freedom of Information and Protection Act,* a statute whose purposes closely mirror those of the *Privacy Act*: *Ottawa-Carlton District School Board*, [2001] OLRB Rep. November/December 1426. In doing so, the Board pointed out "that it is well recognized that a certified union with bargaining rights is in a different relationship to the employees it represents than is the public at large." ¶16 That relationship, in which the trade union is like "a privy of the employees it represents" (¶15), justifies disclosure of a variety of personal information in the possession of the employer (their terms and conditions of employment, their educational qualifications, their performance evaluations, for example) to the trade union in its capacity as agent of the employees, information that would not be accessible by the public under freedom of information legislation.

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29. In the case before me, the University has failed to establish how a disclosure of a Notice of Decision involving a bargaining unit complainant or respondent to the exclusive bargaining agent, constitutes, or is presumed to constitute, an unjustified invasion of personal privacy within the meaning of subsection 21(1) or (3). The University claims that the information contained in Notices of Decision is "highly sensitive" (subsection 21(2)(f)). However, the Policy permits disclosure of information to a bargaining agent where the unionized *respondent* to a complaint so authorizes. In other words, if the respondent gives his or her authority, there is no confidentiality right of any other participant in the complaint process, including the complainant, to prevent disclosure of any of their personal information contained in a Notice of Decision to LUFA. And in any event, no participant, including the respondent, can prevent disclosure of the contents of any Notice of Decision if there is a subsisting grievance filed by LUFA. So, there can be no reasonable expectation by any person involved in the complaint process of anything but a quite limited entitlement to any confidentiality protection. This undermines the University's contention that disclosure of all Notices of Decision to LUFA constitutes an unjustified invasion of privacy.

30. More importantly, though, a trade union is frequently called upon in its role as bargaining agent to deal with extremely sensitive matters on behalf of its members, particularly when they are in conflict with one another. A union needs to be apprised on inter-personal conflicts and complaints so that it can play its role appropriately as the counterpart to the employer in the workplace.

31. There is nothing to suggest that disclosure to LUFA of a Notice of Decision would *unfairly* damage the reputation of any person referred to in it, as described in subsection 21(2)(i) of the *Privacy Act*. A Notice of Decision may well be relevant to a fair determination of rights affecting LUFA in its capacity as a requestor of the personal information, a factor enumerated under subsection 21(2(d). LUFA is affected by any question concerning the rights of the bargaining unit members for which it is responsible and to whom it owes a duty of fair representation under the *Labour Relations Act, 1995*.

32. So, having reviewed the factors in subsection 21(2) of the *Privacy Act*, I find that, to the extent disclosure of the Notice of Decision to LUFA involves any invasion of personal privacy, it is not an unjustified invasion having regard to: LUFA's role as exclusive bargaining agent; the function of collective bargaining; the language of the Policy itself.

33. I turn to Part III of the *Privacy Act*, which deals with the protection of individual privacy. Counsel for LUFA refers to subsections 41(1)(b) and 41(1)(e), which read:

> **41.** (1) An institution shall not use personal information in its custody or under its control except,
>
> […]
>
> (b) for the purpose for which it was obtained or compiled or for a consistent purpose;
>
> **42.**(1) An institution shall not disclose personal information in its custody or under its control except,
>
> […]

(e) for the purpose of complying with an Act of the Legislature or an Act of Parliament or a treaty, agreement or arrangement thereunder;

34. Counsel for LUFA submits that, to the extent the *Privacy Act* applied at all to the issue in dispute, these provisions permit the disclosure sought in this case by LUFA. Counsel for LUFA argues, correctly in my view, that the mere fact the trade union may obtain personal information pursuant to a statutory exemption does not mean that this is the one and only basis upon which the bargaining agent may be entitled to the information. That point was affirmed by the Board in the *Ford Glass* decision referred to earlier.

35. I am satisfied that subsection 42(1)(e) of the *Privacy Act* permits the disclosure of the Notice of Decision to LUFA. It contemplates that a trade union is entitled pursuant to an Act of the Legislature – in this case, section 70 of the *Labour Relations Act, 1995* - to the information necessary to fulfill its role as bargaining agent. I have found that in order for the University to be in compliance with section 70, it must disclose to LUFA a copy of the Notice of Decision in every case involving a LUFA complainant or respondent. Consequently, subsection 42(1)(e) of the *Privacy Act* permits the disclosure of personal information on a Notice of Decision for the purpose of complying with section 70 of the *Labour Relations Act, 1995.* It is therefore unnecessary to consider subsection 41(1)(b).

36. Finally, I turn to the University's argument concerning subsection 67(1) of the *Privacy Act*. It provides that, subject to the list of confidentiality provisions in the statutes enumerated in subsection 67(2), the *Privacy Act* prevails over any other confidentiality provision in any other statute. To the extent counsel was suggesting that this provision means that the *Privacy Act* takes precedence over the *Labour Relations Act, 1995*, I do not accept the submission. Section 70 of the *Labour Relations Act, 1995* is not a "confidentiality" provision.[4]

Conclusion

37. In summary, nothing in the *Privacy Act* overrides the *Labour Relations Act, 1995* generally or section 70 specifically. In fact, the *Privacy Act* does not apply in the circumstances of this case by virtue of subsection 65(6) of the *Privacy Act*. In the alternative, if the *Privacy Act* applies, the disclosure of the Notices of Decision does not constitute an unjustified invasion of personal privacy within the meaning of subsection 21, and is specifically permitted by subsection 42(1)((e).

"Patrick Kelly"
for the Board

[4] (Unlike, for example, section 119 of the *Labour Relations Act, 1995*, prohibiting the disclosure of a person's membership or non-membership in a trade union or the person's desire or not to be represented by a trade union.)

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Appendix A

2. (1) In this Act,

"personal information" means recorded information about an identifiable individual, including,

(a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, telephone number, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except where they relate to another individual,

(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,

(g) the views or opinions of another individual about the individual, and

(h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

…

17. (1) A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

…

(d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

…

21. (1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

(a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;

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…

(f) if the disclosure does not constitute an unjustified invasion of personal privacy.

…

21. (2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

…

(f) the personal information is highly sensitive;

…

(h) the personal information has been supplied by the individual to whom the information relates in confidence; and

(i) the disclosure may unfairly damage the reputation of any person referred to in the record.

…

21. (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

…

(b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

…

(g) consists of personal recommendations or evaluations, character references or personnel evaluations;

…

21. (4) Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

(a) discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution or a member of the staff of a minister;

(b) discloses financial or other details of a contract for personal services between an individual and an institution;

(c) discloses details of a licence or permit or a similar discretionary financial benefit conferred on an individual by an institution or a head under circumstances where,

(i) the individual represents 1 per cent or more of all persons and organizations in Ontario receiving a similar benefit, and

(ii) the value of the benefit to the individual represents 1 per cent or more of the total value of similar benefits provided to other persons and organizations in Ontario; or

(d) discloses personal information about a deceased individual to the spouse or a close relative of the deceased individual, and the head is satisfied that, in the circumstances, the disclosure is desirable for compassionate reasons.

…

42. (1) An institution shall not disclose personal information in its custody or under its control except,

…

(k) to a member of the bargaining agent who has been authorized by an employee to whom the information relates to make an inquiry on the employee's behalf or, where the employee is incapacitated, has been authorized by the spouse, a close relative or the legal representative of the employee;

…

49. A head may refuse to disclose to the individual to whom the information relates personal information,

…

(d) that is medical information where the disclosure could reasonably be expected to prejudice the mental or physical health of the individual;

…

67. (1) This Act prevails over a confidentiality provision in any other Act unless subsection (2) or the other Act specifically provides otherwise.

(2) The following confidentiality provisions prevail over this Act:

1. Subsection 53 (1) of the *Assessment Act*.

2. Subsections 45 (8), (9) and (10), 54 (4) and (5), 74 (5), 75 (6), 76 (11) and 116 (6) and section 165 of the *Child and Family Services Act*.

3. Section 68 of the *Colleges Collective Bargaining Act, 2008*.

4. Section 10 of the *Commodity Futures Act*.

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5. REPEALED: .

6. Subsection 137 (2) of the *Courts of Justice Act*.

7. Subsection 113 (1) of the *Labour Relations Act*.

7.0.1 Sections 89, 90 and 92 of the *Legal Aid Services Act, 1998*.

7.1 Section 40.1 of the *Occupational Health and Safety Act*.

8. Subsection 32 (4) of the *Pay Equity Act*.

8.1 REPEALED:

9. Sections 16 and 17 of the *Securities Act*.

10. Subsection 4 (2) of the *Statistics Act*.

11. Subsection 28 (2) of the *Vital Statistics Act*.

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