

2025 01G

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

BETWEEN:

NEIL BOSE, THE PRESIDENT AND
VICE-CHANCELLOR *PRO TEMPORE* OF MEMORIAL
UNIVERSITY OF NEWFOUNDLAND

APPLICANT

ORIGINATING APPLICATION
(EX PARTE)

Summary of Current Document	
Court file number:	2025 01G
Date of filing of document:	April 3, 2025
Name of party or person filing:	Neil Bose, The President and Vice-Chancellor <i>Pro Tempore</i> of Memorial University of Newfoundland
Application to which document being filed relates:	Originating Application pursuant to section 50(2)(b) of the <i>Access to Information and Protection of Privacy Act, 2015</i> , c A-1.2 seeking a declaration that the Applicant is not required to comply with recommendations of the Information and Privacy Commissioner of Newfoundland and Labrador.
Statement of purpose in filing:	To commence Application

KOREN A. THOMSON
STEWART MCKELVEY
Suite 1100, Cabot Place
100 New Gower Street
St. John's, NL A1C 6K3
Solicitors for the Applicant

NATURE OF APPLICATION

1. This is an Originating Application (*Ex Parte*) by the Applicant ("**Memorial University**"), pursuant to section 50(2)(b) of the *Access to Information and protection of Privacy Act, 2015*, S.N.L. 2015, c. A-1.2 (the "**ATIPPA**"), seeking a declaration that Memorial University is not required to comply with recommendations of the Information and Privacy Commissioner of Newfoundland and Labrador.

MATERIAL FACTS

2. The Information and Privacy Commissioner of Newfoundland and Labrador (the "**OIPC**") investigated two complaints regarding the following access to information request made to Memorial University:

*Associate Vice-President of Harlow and Global Partnerships
employment contract.*

(the "**Request**").

3. Memorial University denied the Request. As part of its final response to the Requester, Memorial University explained that the Harlow Campus is managed by a separate legal entity, MUN UK Ltd. ("**MUN UK**"), which is incorporated in and governed by laws of the United Kingdom ("**UK**").
4. The Requester filed a complaint with the OIPC. That complaint proceeded to formal investigation, which resulted in the release of Report A-2024-053.
5. In Report A-2024-053 the OIPC concluded that Memorial University had custody and control of the record and recommended that Memorial University conduct a line-by-line review of the employment contract and provide a new response to the Complainant within 10 business days. Memorial University maintained its position that the employee is not a public body employee and that it did not have custody or control of the record sought. Despite this, Memorial University complied with the OIPC's recommendation and subsequently provided a redacted copy of the record to the Complainant and the OIPC. Redactions were made pursuant to section 40(1) of the ATIPPA
6. The Requester filed a subsequent complaint with the OIPC objecting to the redactions, which proceeded to formal investigation.

7. The investigation culminated in the issuance of Report A-2025-015 (the "Report"). The OIPC determined:
 - (a) That MUN UK is part of Memorial University and is subject to the ATIPPA. As such, the Associate Vice-President of MUN UK is a public body employee and disclosure of their employment information is not a violation of personal privacy.
 - (b) Memorial University has custody and control of the record.
 - (c) The ATIPPA is determinative of the issue of disclosure and UK privacy laws do not apply.
 - (d) Disclosure of the record is desirable for the purpose of subjecting Memorial University, a public body, to public scrutiny under section 40(5)(a) of the ATIPPA, which outweighs any other arguments that Memorial University raised to support non-disclosure.
8. In the Report, the OIPC recommended that Memorial University disclose the record to the Complainant, subject only to the redaction of the employee's home address and their signature.
9. Memorial University submits that it cannot comply with the OIPC's recommendation for disclosure and seeks a Declaration under section 50(2)(b) for the following reasons:
 - (a) Memorial University does not have custody or control of the record sought in the Request. Memorial University has bare possession of the record because the President of Memorial University signed it in his capacity as the Chair of MUN UK's Board of Directors. The President's role as Chair is distinct from his role as President of Memorial University.
 - (b) MUN UK is not a part of Memorial University and is not subject to the ATIPPA.
 - (c) MUN UK is a distinct and separate entity from Memorial University, incorporated under and governed by the laws of the United Kingdom ("UK").
 - (d) Employees of MUN UK are not Memorial University employees. Rather, MUN UK employees sign employment contracts with MUN UK which are governed by UK privacy laws.

- (e) Disclosure and protection of the requested information is governed by UK law.
 - (f) UK privacy and data protection legislation prohibits disclosure of employee's personal information, including their employment contracts, without consent.
 - (g) In the alternative, in the event Memorial University has custody and control of the requested information and it is subject to ATIPPA, disclosure under the ATIPPA would constitute a violation of the employee's personal privacy under section 40(4) of the ATIPPA. The individual in question is a UK citizen employed by a UK-based company and has a legitimate expectation that their personal information is protected from disclosure under UK privacy laws.
10. Memorial University repeats the forgoing and maintains that it does not have custody and control of the record, and that disclosure would be an unreasonable invasion of privacy given the prevalence of UK privacy legislation and the employee's reasonable expectation that their personal information is protected from disclosure under those laws. The particulars of this information will be set out in affidavit evidence to be presented at trial.

OTHER PERTINENT INFORMATION

11. Sections 50(1) and (2) of the ATIPPA state:

50. (1) This section applies to a recommendation of the commissioner under section 47 that the head of the public body

(a) grant the applicant access to the record or part of the record; or

(b) make the requested correction to personal information.

(2) Where the head of the public body decides not to comply with a recommendation of the commissioner referred to in subsection (1) in whole or in part, the head shall, not later than 10 business days after receipt of that recommendation, apply to the Trial Division for a declaration that the public body is not required to comply with that recommendation because

(a) the head of the public body is authorized under this Part to refuse access to the record or part of the record, and, where applicable, it has not been clearly demonstrated that the public interest in disclosure of the information outweighs the reason for the exception;


(b) the head of the public body is required under this Part to refuse access to the record or part of the record; or

(c) the decision of the head of the public body not to make the requested correction to personal information is in accordance with this Act or the regulations.

RELIEF REQUESTED

12. Memorial University therefore seeks a declaration pursuant to section 50(2)(b) of the ATIPPA that it is authorized to refuse the recommendation set out in the Report on the basis that Memorial does not have custody and control of the record, and that disclosure would result in an unreasonable invasion of the employee's personal privacy.

Dated at St. John's, this 3rd day of April, 2025.

for 
KOREN A. THOMSON
STEWART MCKELVEY
Suite 1100, Cabot Place
100 New Gower Street
St. John's, NL A1C 6K3
Solicitor for the Applicant

2025 01G

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

BETWEEN:

**NEIL BOSE, THE PRESIDENT AND
VICE-CHANCELLOR *PRO TEMPORE* OF MEMORIAL
UNIVERSITY OF NEWFOUNDLAND**

APPLICANT

ORDER

BEFORE THE HONOURABLE JUSTICE :

UPON IT APPEARING THAT the Applicant has made an Originating Application pursuant to section 50(2)(b) of the *Access to Information and Protection of Privacy Act, 2015*, S.N.L. 2015, c. A-1.2 (the "ATIPPA") seeking a declaration that the Applicant does not have to comply with recommendations of the Information and Privacy Commissioner of Newfoundland and Labrador as set out in Report A-2025-015.

AND UPON HEARING FROM Koren A. Thomson, counsel for the Applicant;

IT IS THIS DAY DECLARED THAT: Memorial University is not required to comply with the recommendations of the Information and Privacy Commissioner of Newfoundland and Labrador as set out in Report A-2025-015.

DATED at the City of St. John's, in the Province of Newfoundland and Labrador, this day of
, 2025.

COURT OFFICER

2025 01G

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

BETWEEN:

NEIL BOSE, THE PRESIDENT AND
VICE-CHANCELLOR *PRO TEMPORE* OF MEMORIAL
UNIVERSITY OF NEWFOUNDLAND

APPLICANT

AFFIDAVIT OF MAGGIE NOSEWORTHY

Summary of Current Document	
Court file number:	2025 01G
Date of filing of document:	April 3, 2025
Name of party or person filing:	Neil Bose, The President and Vice-Chancellor <i>Pro Tempore</i> of Memorial University of Newfoundland
Application to which document being filed relates:	Originating Application pursuant to section 50(2)(b) of the <i>Access to Information and Protection of Privacy Act, 2015</i> , c A-1.2 seeking a declaration that the Applicant is not required to comply with recommendations of the Information and Privacy Commissioner of Newfoundland and Labrador.
Statement of purpose in filing:	To Support Application

I, MAGGIE NOSEWORTHY, of the City of St. John's, in the Province of Newfoundland and Labrador, make oath and say as follows:

1. I am the University Privacy Officer of Memorial University of Newfoundland, the Applicant in the within matter ("**Memorial University**"). As University Privacy Officer I manage access to information requests and complaints under the *Access to Information and Protection of Privacy Act, 2015*, S.N.L. 2015, c. A-1.2 (the "**ATIPPA**"). As such I have knowledge of the matters herein deposed, and am authorized by Memorial University to execute this Affidavit.
2. The Information and Privacy Commissioner of Newfoundland and Labrador (the "**OIPC**") investigated two complaints regarding the following access to information request made to Memorial University:

*Associate Vice-President of Harlow and Global Partnerships
employment contract.*

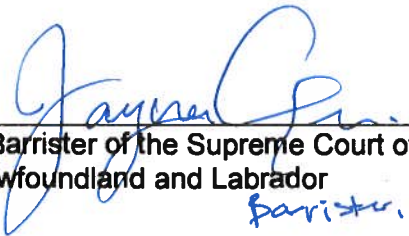
(the “Request”).

3. Memorial University refused access to the records responsive to the Request, citing section 40(1) of the ATIPPA. As part of its final response to the Requester, Memorial University explained that the Harlow Campus is managed by a separate legal entity, MUN UK Ltd. (“MUN UK”), which is incorporated in and governed by laws of the United Kingdom (“UK”).
4. The Requester filed a complaint with the OIPC. That complaint proceeded to formal investigation, which resulted in the release of Report A-2024-053.
5. In Report A-2024-053 the OIPC concluded that Memorial University had custody and control of the record and recommended that Memorial University conduct a line-by-line review of the employment contract and provide a new response to the Complainant within 10 business days. Memorial University maintained its position that the employee is not a public body employee and that it did not have custody or control of the record sought. Despite this, Memorial University complied with the OIPC’s recommendation and subsequently provided a redacted copy of the record to the Complainant and the OIPC. Redactions were made pursuant to section 40(1) of the ATIPPA.
6. The Requester filed a subsequent complaint with the OIPC objecting to the redactions, which proceeded to formal investigation.
7. The investigation culminated in the issuance of Report A-2025-015 (the “Report”). The OIPC determined:
 - (a) That MUN UK is part of Memorial University and is subject to the ATIPPA. As such, the Associate Vice-President of MUN UK is a public body employee and disclosure of their employment information is not a violation of personal privacy.
 - (b) Memorial University has custody and control of the record.
 - (c) The ATIPPA is determinative of the issue of disclosure and UK privacy laws do not apply.

- (d) Disclosure of the record is desirable for the purpose of subjecting Memorial University, a public body, to public scrutiny under section 40(5)(a) of the ATIPPA, which outweighs any other arguments that Memorial University raised to support non-disclosure.
8. In the Report, the OIPC recommended that Memorial University disclose the record to the Complainant, subject only to the redaction of the employee's home address and their signature.
9. Memorial University cannot comply with the OIPC's recommendation for the following reasons:
- (a) Memorial University does not have custody or control of the record sought in the Request. Memorial University has bare possession of the record because the President of Memorial University signed it in his capacity as the Chair of MUN UK's Board of Directors. The President's role as Chair is distinct from his role as President of Memorial University.
 - (b) MUN UK is not a part of Memorial University and is not subject to the ATIPPA.
 - (c) MUN UK is a distinct and separate entity from Memorial University, incorporated under and governed by the laws of the United Kingdom ("UK").
 - (d) Employees of MUN UK are not Memorial University employees. Rather, MUN UK employees sign employment contracts with MUN UK which are governed by UK privacy laws.
 - (e) Disclosure and protection of the requested information is governed by UK law.
 - (f) UK privacy and data protection legislation prohibits disclosure of employee's personal information, including their employment contracts, without consent.
 - (g) In the alternative, in the event Memorial University has custody and control of the requested information and it is subject to ATIPPA, disclosure under the ATIPPA would constitute a violation of the employee's personal privacy under section 40(4) of the ATIPPA. The individual in question is a UK citizen employed by a UK-based company and has a legitimate expectation that their personal information is protected from disclosure under UK privacy laws.

10. I swear that the information contained herein is true to the best of my knowledge, information and belief, and I make this Affidavit in support of Memorial University's Originating Application (*Ex Parte*) for a declaration under section 50(2)(b) of the ATIPPA that it does not have to comply with the OIPC's recommendations in Report A-2025-015.

SWORN TO at St. John's, in the Province of Newfoundland and Labrador, the ^{31st} day of April, 2025 before me:


A Barrister of the Supreme Court of Newfoundland and Labrador
Pariso, NL


MAGGIE NOSEWORTHY