Federal Court  Cour fédérale

Date: 20141219

Docket: T-511-13

Citation: 2014 FC 1170

BETWEEN:

HUSKY OIL OPERATIONS LIMITED

Applicant

and

CANADA-NEWFOUNDLAND AND LABRADOR OFFSHORE PETROLEUM BOARD

and

THE INFORMATION COMMISSIONER OF CANADA

Respondents

PUBLIC REASONS FOR JUDGMENT

(Confidential Reasons for Judgment Issued on December 8, 2014)

HENEGHAN J.

I. INTRODUCTION

[1] Husky Oil Operations Limited (the "Applicant") seeks judicial review pursuant to section 44 of the *Access to Information Act*, R.S.C. 1985, c. A-1 (the "Access Act") of a decision of the

Canada – Newfoundland and Labrador Offshore Petroleum Board (the "Board") dated March 6, 2013. In that decision, the Board determined that certain information was not privileged pursuant to section 119(2) of the *Canada – Newfoundland Atlantic Accord Implementation Act*, S.C. 1987, c. 3 (the "Accord Act"). As a result, the Board advised that it would disclose the information, subject to certain redactions to be made pursuant to paragraph 20(1)(b) and section 19 of the Access Act.

[2] By Order dated May 3, 2013, the Information Commissioner of Canada (the "Commissioner") was added as a Respondent to this proceeding with leave to serve and file a response to the Applicant's Motion for a Confidentiality Order, and to serve and file a Memorandum of Fact and Law.

[3] On May 27, 2013 a Confidentiality Order was issued, restricting disclosure of certain information and materials filed in this application**.** The Confidentiality Order applies to the information that is the subject of the within application for judicial review, and any other material that the Respondent would be authorized to refuse to disclose pursuant to the Access Act.

[4] By letter dated April 17, 2014 the Commissioner advised that she would rely on the written submissions without attending at the hearing to present oral argument.

II. BACKGROUND

[5] The Applicant is a division of Husky Energy, which is one of Canada's largest integrated energy companies. It is engaged in petroleum drilling and extraction in the Newfoundland and Labrador offshore area. Husky operates offshore drilling rigs, including the "Henry Goodrich."

[6] The Board is a statutory body responsible for the regulation of petroleum drilling and extraction off the coasts of Newfoundland and Labrador. It regulates the activities of operators in the oil and gas industry, including those of the Applicant.

[7] The Board received an Access to Information request (the "Request") dated January 15, 2013 seeking disclosure of "[w]ritten incident notifications and completed incident investigation reports provided to the [B]oard by the operator of the Henry Goodrich", pursuant to the Access Act. The Request sought access to records from April 1, 2012 to December 31, 2012.

[8] On February 6, 2013 the Board sent a letter to Husky, advising it about the Request. The Board asked for Husky's position as to whether the information should be withheld or redacted pursuant to the Access Act. The Board attached to the letter certain documents that originated from, or were of interest to, Husky, and that were relevant to the Request.

[9] On February 21, 2013 the Board sent a second letter to Husky, attaching more documents that originated from, or were of interest to, Husky, and relevant to the Request. Again the Board asked for Husky's comments about disclosure of the information.

[10] Husky responded to the Board's letter of February 6, 2013 by a letter dated February 25, 2013. Husky advised that the incident notifications and incident investigation reports included in the requested information were provided to the Board pursuant to regulations enacted under Part III of the Accord Act.

[11] Husky expressed the opinion that the statutory privilege created by subsection 119(2) of the Accord Act applied and that none of the subsection 119(5) exceptions to that privilege were available to allow disclosure. Husky said that the records should be withheld from disclosure in their entirety pursuant to subsection 24(1) of the Access Act.

[12] Husky also expressed the opinion that, notwithstanding its view that the records were exempt from disclosure in their entirety, certain portions of the records should be redacted pursuant to section 23 of the Access Act on the grounds of solicitor-client privilege. As well, it said that confidential technical information was exempt from disclosure pursuant to paragraph 20(1)(b) and certain personal information was exempt pursuant to subsection 19(1). Husky included with this letter a redacted version of the records sent to it by the Board.

[13] By letter dated February 26, 2013 Husky responded to the Board's letter of February 21, 2013. In this letter Husky repeated its objections to disclosure and relied on the same statutory provisions to justify non-disclosure or redaction of the information in issue, as it had stated in its letter of February 25, 2013.

III. DECISION UNDER REVIEW

[14] By letter dated March 6, 2013, the Board responded to Husky. It determined that the information contained in the disputed records should be disclosed in large part.

[15] The Board noted that notwithstanding the fact that Husky had submitted the documents pursuant to requirements set out in regulations that had been made under Part III of the Accord Act, the documents should be disclosed. The Board expressed the opinion that it would be in the public interest to release the documents, as permitted by subsection 119(2) of the Accord Act, that is, for the purposes of the administration and enforcement of Parts II and III of the Accord Act.

[16] The Board agreed with Husky that certain information in the documents should be redacted pursuant to section 23, paragraph 20(1)(b) and section 19 of the Access Act. The Board forwarded copies of the redacted documents that it proposed to disclose. The Board advised the Applicant that it was entitled to apply to the Federal Court for judicial review pursuant to subsection 44(1) of the Access Act.

IV. RELEVANT LEGISLATION

[17] Section 119(2) of the Accord Act states as follows:

119(2) Subject to section 18 and this section, information or documentation provided for the purposes of this Part or Part III or any regulation made under either Part, whether or not such information or	119(2) Sous réserve de l'article 18 et des autres dispositions du présent article, les renseignements fournis pour l'application de la présente partie, de la partie III ou de leurs règlements, sont, que leur

documentation is required to be provided under either Part or any regulation made thereunder, is privileged and shall not knowingly be disclosed without the consent in writing of the person who provided it except for the purposes of the administration or enforcement of either Part or for the purposes of legal proceedings relating to such administration or enforcement.	fourniture soit obligatoire ou non, protégés et ne peuvent, sciemment, être communiqués sans le consentement écrit de la personne qui les a fournis, si ce n'est pour l'application de ces lois ou dans le cadre de procédures judiciaires relatives intentées à cet égard.

[18] Section 24(1) of the Access Act states as follows:

24. (1) The head of a government institution shall refuse to disclose any record requested under this Act that contains information the disclosure of which is restricted by or pursuant to any provision set out in Schedule II.	24. (1) Le responsable d'une institution fédérale est tenu de refuser la communication de documents contenant des renseignements dont la communication est restreinte en vertu d'une disposition figurant à l'annexe II.

V. ISSUES

[19] This application raises two issues as follows:

1. What is the appropriate standard of review?
2. Did the Board commit a reviewable error in finding that the privilege provided in subsection 119(2) of the Accord Act did not exempt the documents in issue from disclosure pursuant to subsection 24(1) of the Access Act?

VI. SUBMISSIONS

A. *Applicant's Submissions*

[20] The Applicant argues that the standard of correctness applies in judicial review of a decision made pursuant to section 44 of the Access Act, relying in this regard upon the decision in *Hibernia Management and Development Co. v. Canada – Newfoundland and Labrador Offshore Petroleum Board* (2012), 407 F.T.R. 293 at paragraph 43.

[21] The Applicant also submits that the exception to the right of access that is permitted by subsection 24(1) of the Access Act is mandatory. Accordingly, the judicial review is a *de novo* review and the decision made is owed no deference by the Court.

[22] The Applicant characterizes this issue as one of statutory interpretation and argues that the Board incorrectly interpreted subsection 119(2) of the Accord Act as conferring discretion to disclose information, in the public interest.

[23] The Applicant submits that the Court is to be guided in interpreting legislation in accordance with the principles set out in section 12 of the *Interpretation Act*, R.S.C. 1985, c. I-21 and in the decision in *Rizzo and Rizzo Shoes Ltd (Re)*, [1998] 1 S.C.R. 27 at paragraph 21.

[24] The Applicant argues that the privilege conferred by subsection 119(2) of the Accord Act applies to information provided pursuant to this provision or Parts II and III of the Accord Act. There is no dispute among the parties that the incident notification reports and incident investigation reports were provided by the Applicant for the purposes of Part III of the Accord Act and the regulations made pursuant to that part. It argues that the statutory privilege in subsection 119(2) applies specifically to the incident notification and investigation reports.

[25] Further, the Applicant submits that none of the exemptions to the privilege apply, noting in particular paragraph 119(5)(g.1), which allows disclosure of the privileged information relating to accidents, incidents or petroleum spills.

[26] In broad terms, the Applicant argues that upon a contextual analysis, subsection 119(2) of the Accord Act is meant to encourage witnesses and parties to participate openly in safety investigations. If Parliament intended to create a public interest discretion to authorize the disclosure of privileged information, it would have clearly set out such an exemption.

B. *The Board's Submissions*

[27] The Board submits that judicial review under the Access Act is subject to review on the standard of correctness**.** However, while it acknowledged that section 24 of the Access Act is a mandatory exception, it argues that subsection 119(2) of the Accord Act contains an "element of discretion" and that the exercise of that discretion is reviewable on the standard of reasonableness, on the basis of the decision in *Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403 at paragraphs 110-111.

[28] The Board argues that a party resisting disclosure bears the burden of showing that disclosure should be withheld and in meeting that burden must show, on a balance of probabilities, that a statutory exemption is available. In that regard, the Board relies on the decision in *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23 at paragraphs 92 and 94.

[29] It also submits that the information that is requested under the Access Act should be withheld only in the most limited and specific circumstances, relying on the decision in *Rubin v. Canada (Minister of Transport)* (1997), 221 N.R. 145 at paragraphs 23 – 24 (F.C.A.).

[30] The Board further argues that subsection 119(2) of the Accord Act contains an "element of discretion" that authorizes disclosure notwithstanding the statutory privilege created by that provision. It submits that the Applicant, in its arguments, ignores that discretion.

[31] Describing itself as a safety regulator working in the public interest, the Board argues that the release of the requested information informs the public about management of safety issues in the offshore industry.

[32] The Board further submits that it exercised its discretion to release the information in good faith, and without regard to irrelevant considerations. It claims that its exercise of discretion was reasonable.

C. *The Commissioner's Submissions*

[33] The Commissioner argues that a decision made pursuant to section 24 of the Access Act as to whether information is exempt from disclosure, is reviewable on a correctness standard. In this regard, she relies on the decision in *Hibernia, supra*. She also submits that the status of the records as privileged, pursuant to subsection 119(2) of the Accord Act, is likewise reviewable on the standard of correctness.

[34] The Commissioner submits that the right of access to government records is quasi-constitutional, protected as a derivative right of freedom of expression pursuant to the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act* 1982 (UK), 1982, c. 11. In this regard, the Commissioner relies on the decision in *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, [2011] 2 S.C.R. 306 at paragraph 10.

[35] The Commissioner argues that the Applicant has failed to meet its onus of showing that the information must be withheld since it has relied only on subsection 24(1) to justify non-disclosure. The Commissioner argues that the Applicant has failed to show that non-disclosure is warranted under any other provision of the Access Act on which it relies in its Notice of Application.

[36] The Commissioner also submits that the Board correctly determined that the requested information falls within an exception to the privilege conferred by subsection 119(2) and that consequently, the Board correctly decided that disclosure was not restricted by subsection 24(1) of the Access Act.

VII. DISCUSSION

[37] This application for judicial review is brought pursuant to section 44 of the Access Act. The legislative purpose of the Access Act is to promote disclosure of information in the hands of government institutions, as provided in subsection 2(1) of that Act.

[38] According to the Supreme Court of Canada in *Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403 at paragraph 51, access to information is the general rule under the Access Act. This presumption in favour of disclosure is, however, subject to specific, necessary exceptions; see subsection 2(1) of the Access Act.

[39] The statutory prohibition against disclosure contained in subsection 24(1) of the Access Act is one such exception. That provision creates a prohibition against disclosure of information that is "restricted by or pursuant to any provision set out in Schedule II."

[40] Schedule II of the Access Act includes section 119 of the Accord Act, pursuant to an amendment made in subsection 1(2) of the Revised Statutes of Canada, 1985 c. 3 (3d Supp.).

[41] In the within matter, the information was submitted by the Applicant to the Board pursuant to Part III of the Access Act and the regulations enacted under that Part. I refer to section 76 of the *Newfoundland Offshore Drilling and Production Regulations*, SOR/2009-316, which provides as follows:

> 76(1) The operator shall ensure that
>
> (a) the Board is notified of any incident or near-miss as soon as the circumstances permit; and
>
> (b) the Board is notified at least 24 hours in advance of any press release or press conference held by the operator concerning any incident or near-miss during any activity to which these Regulations apply, except in an emergency situation, in which case it shall be notified without delay before the press release or press conference.
>
> (2) The operator shall ensure that
>
> (a) any incident or near-miss is investigated, its root cause and causal factors identified and corrective action taken; and

> (b) for any of the following incidents or near-misses, a copy of an investigation report identifying the root cause, causal factors and corrective action taken is submitted to the Board no later than 21 days after the day on which the incident or near-miss occurred:
>
> (i) a lost or restricted workday injury,
>
> (ii) death,
>
> (iii) fire or explosion,
>
> (iv) a loss of containment of any fluid from a well,
>
> (v) an imminent threat to the safety of a person, installation or support craft, or,
>
> (vi) a significant pollution event.

[42] The first issue to be determined is the applicable standard of review.

[43] Both the Applicant and the Commissioner submit that the Board's decision is reviewable on the standard of correctness; they characterize the threshold question as being one of statutory interpretation.

[44] The Board, on the other hand, advocates that the decision is reviewable on the standard of reasonableness because it argues that the relevant statutory provision provides discretion in the matter of ordinary disclosure of the documents in issue. It submits that disclosure of documents for the purposes of administration and enforcement is an exception to the mandatory privilege under subsection 119(2).

[45] In my opinion, the applicable standard of review in this case is correctness on the ground that the jurisprudence has already established correctness as the prevailing standard of review. In

this regard, I refer to the decisions in *Hibernia*, *supra*, and *Oceans Ltd. v. Canada-Newfoundland & Labrador Offshore Petroleum Board* (2009), 356 F.T.R. 106 at paragraph 13.

[46] In *Hibernia*, *supra* the Court said the following at paragraph 45:

> 45. In the case at bar, all the claimed bases of exemption are mandatory in nature. The jurisprudence is well established that the Court should not show deference to a board's decision on whether or not a given document is included in a mandatory statutory disclosure exemption. The Court should therefore review this matter on a standard of correctness (see *Thurlow v. Canada (Solicitor General)*, 2003 FC 1414, [2003] F.C.J. 1802 (F.C.) at paragraph 28; *Provincial Airlines Ltd. v. Canada (Attorney General)*, 2010 FC 302, [2010] F.C.J. No. 994 (F.C.) at paragraphs 17 and 18). If the Court does not agree with the Board's decision, it must substitute its own view and provide the correct answer (see *Dunsmuir* above, at paragraph 50).

[47] I do not accept the Board's argument that subsection 119(2) of the Accord Act contains an "element of discretion." The determination of whether information falls within subsection 119(2) of the Accord Act, that is information to be disclosed for the purposes of administration and enforcement of that Act, is a factual determination, not a discretionary one. The exemption from disclosure found at subsection 24(1) of the Access Act is mandatory. I conclude that the applicable standard of review in this case is correctness.

[48] The dispositive issue in this application is whether the Board erred in its interpretation of subsection 119(2) of the Accord Act**.**

[49] The task of statutory interpretation is governed by section 12 of the *Interpretation Act*, *supra*, which provides as follows:

> 12. Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

[50] The direction given by section 12 of the *Interpretation Act* is supported by the decision of the Supreme Court of Canada in *Rizzo*, *supra* where the Court said the following at paragraph 21:

> Although much has been written about the interpretation of legislation…Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:
>
> > Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[51] This approach has been followed in more recent decisions of the Supreme Court of Canada, including *65302 British Columbia Ltd. v. Canada*, [1999] 3 S.C.R. 804 at paragraph 5 and *Canada Trustco Mortgage Co. v. Canada*, [2005] 2 S.C.R. 601 at paragraph 10.

[52] Determination of what is required for the "purposes of administration and enforcement" of the Accord Act must begin with consideration of the objectives of the Act. The preamble of the Accord Act reads in part, as follows:

> Whereas the Government of Canada and the Government of Newfoundland and Labrador have entered into the Atlantic Accord and have agree that neither Government will introduce amendments to this Act or any regulation made thereunder without the consent of both Governments:

[53] "Atlantic Accord" is defined in section 2 of the Accord Act as follows:

> "Atlantic Accord" means the Memorandum of Agreement between the Government of Canada and the Government of the Province on offshore petroleum resource management and revenue sharing dated February 11, 1985, and includes any amendments thereto;

[54] The preamble and this definition, when read together, provide that the objectives of the Accord Act are to regulate the exploration, exploitation, management, and revenue sharing relating to the petroleum resources off the coasts of Newfoundland and Labrador.

[55] The terms of the Accord Act must be approached from the perspective of giving effect to these objectives.

[56] Subsection 119(2) of the Accord Act, on its face, creates a privilege against disclosure, except as otherwise provided. *Prima facie*, that privilege applies to the records in question and exempts them from disclosure.

[57] In general, "privilege" in the context of litigation, is a protection against the disclosure of information. It is an exclusionary rule that is based "upon social values, usually external to the trial process"; see John Sopinka et al. *The Law of Evidence in Canada*, 4th ed. (Markham: LexisNexis Canada Inc., 2014) at paragraph 14.1 at 917.

[58] The common law recognizes privilege for communications between solicitor and client. Legislation has established privilege for spousal communications, and others, such as doctor and patient and clergy and parishioner; see the decision in *Blank v. Canada (Department of Justice)*,

[2006] 2 S.C.R. 319 at paragraphs 24-26. See also section 4(3) of the *Canada Evidence Act*, R.S.C. 1985 c. C-5; *R v. Couture*, [2007] 2 S.C.R. 517 at paragraph 41; and the *Medical Act*, CQLR c. M-9 s. 42.

[59] The jurisprudence has established that the public has a real and important interest in having access to information relative to safety in the offshore industry and the Board's fulfillment of its mandate; see the decision in *Hibernia*, *supra*.

[60] The Board has not shown that exemption of the information from the benefit of the privilege would be necessary for the purposes of administration or enforcement of the Accord Act. The interpretation of that provision, as submitted by both the Board and the Commissioner, would effectively create a public interest discretion which is not found in the Accord Act.

[61] The safe pursuit of offshore exploration activities is part of the Board's mandate, and is specifically addressed in section 135.1 of the Accord Act. However, the disclosure of information in response to a request made under the Access Act, allegedly to increase public awareness about safety measures undertaken or monitored by the Board, is not justified by a plain reading of subsection 119(2).

[62] In *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, [2011] 2 S.C.R. 306 at paragraph 40, the Supreme Court of Canada said that notwithstanding the quasi-constitutional status of the Access Act, the general principles of statutory interpretation still apply. In interpreting legislation, the Court cannot disregard the actual words chosen by

Parliament, nor can it re-write the legislation to accord with its view of how the legislative purpose could have been better promoted.

[63] I acknowledge that the public interest is a concern in determining whether information should be exempt from disclosure in this context. The Access Act is intended to facilitate public access to information held by the government institutions. The Access Act is public interest legislation, insofar as it is supposed to help facilitate democracy; see the decision in *Dagg*, *supra* at paragraph 61.

[64] In exempting information from disclosure, the business, privacy or other interests that are at stake must be weighed against the public interest in favouring disclosure. The public interest *per se*, however, cannot override the express language of a statute. I agree with the submissions of the Applicant that if Parliament had intended to confer a broad public interest discretion, it would have done so in clear terms.

[65] I note that in other legislation where Parliament intended to create discretion to disclose privileged information on the basis of public interest, it has done so using clear and express language. I refer, as an example, to paragraph 28(6)(c) of the *Canada Transportation Accident Investigation and Safety Board Act*, S.C. 1998 c. 10, which permits disclosure of privileged information where "the court or coroner concludes in the circumstances of the case that the public interest in the proper administration of justice outweighs the importance of the privilege."

[66] In my opinion, if Parliament had intended to include a public interest override for the statutory privilege in subsection 119(2) of the Accord Act, it would have done so in clear terms, as it has in the *Canada Transportation and Accident Investigation and Safety Board Act*, *supra*.

[67] Rather than a broad public interest discretion, in my opinion Parliament created a limited exception to the privilege established by subsection 119(2) of the Accord Act. The provision requires a factual determination; if disclosure is required for the purposes of administration and enforcement of Parts II or III of the Accord Act, it is permitted. If disclosure it is not required for such purposes, it is not allowed.

[68] Part II of the Accord Act is entitled "Petroleum Resources" and relates to the issuance of interests, exploration licences, drilling orders, discovery licences, and the registration, transfer and assignment of such licences, among other things. Part III is entitled "Petroleum Operations", and addresses the establishment of various supervisory and advisory boards and committees, safety considerations, waste, spills and enforcement mechanisms.

[69] It is important to highlight that disclosure, within the scope of subsection 119(2), would be for the purposes of "administration or enforcement" of the Accord Act, not the Access Act. The exception in subsection 119(2) does not apply to permit disclosure for the purposes of administration of any act other than the Accord Act. The Board cannot invent a public interest exception when the statutory language does not establish such an exception.

[70] The words "administration and enforcement" are not defined in the Accord Act. The words must be interpreted in the context of the Board's functions under the Accord Act, and specifically in relation to Parts II and III of that Act.

[71] The Board's general mandate is established in Part I of the Accord Act. Pursuant to subsection 17(1), the Board must perform the duties and functions that are conferred or imposed upon it by either the Atlantic Accord agreement or the Accord Act.

[72] In my opinion, "administration" means the routine, quotidian tasks that are necessary to give effect to the regulatory scheme set out in Parts II and III of the Accord Act; see the decision in *Michelin North America (Canada) Inc. v. Ace Ina Insurance* (2008), 69 C.C.P.B. 207 (Ont. Sup Ct.) where the Court said the following at paragraph 44:

> It is clear that "administration" involves acts incurred in respect of relatively routine, ministerial or clerical acts… The definition of "administration" does not include discretionary management decisions.

[73] Similarly, "enforcement" refers to specific actions, such as orders, directions and investigations, which are required by the Board to implement the terms and objectives of the Accord Act.

[74] In *Chrysler Canada Ltd. v. Canada (Competition Tribunal)* (1990), 31 C.P.R. (3d) 510 at 516 (F.C.A.), the Federal Court of Appeal interpreted the words "the enforcement of its orders" as referring to the enforcement of orders to ensure that applications were disposed of in a rational and fair manner. This interpretation suggests that like "administration", "enforcement" in the

context of the Accord Act also refers to specific actions that the Board may take to carry out its function.

[75] The French version of subsection 119(2) of the Accord Act provides that the reports "sont…protégés et ne peuvent, sciemment, être communiqués sans le consentement écrit de la personne qui les a fournis, si ce n'est pour l'application de ces lois [emphasis added]…"

[76] In *R c. Bois*, [2004] 1 S.C.R. 217, the Supreme Court of Canada discussed the principles applicable to the interpretation of bilingual legislation. In that decision, the Court adopted the analysis proposed by Professor Côté in *The Interpretation of Legislation in Canada,* 3rd ed. (Scarborough: Carswell Thompson Professional Publishing, 2000), which proposes that differences between versions of the same legislation should be reconciled by adducing the meaning common to both; see paragraph 26 of *Bois, supra*.

[77] According to *Le Robert & Collins* 8th ed., "application" is defined as follows:

> (= mise en pratique); (gén) application; [*de peine*] enforcement; [*de règlement, décision*] implementation ; [*de loi*] enforcement, application; [*de rèmede*] administration.

[78] The use of "ces" relative to the word "lois" is a demonstrative adjective that means "these"; see *Le Robert & Collins, supra, sub verbo* "ce". It is used to designate something or someone that is specifically mentioned, in this case, the provisions of Parts II and III of the Accord Act, and any regulations made pursuant to those Parts.

[79] In my opinion, the French version of subsection 119(2) of the Accord Act supports the interpretation of that section as permitting disclosure of privileged information only where such disclosure is required to implement, apply, or give effect to the specific provisions of the regulatory scheme established by the Accord Act and its regulations.

[80] Division III in Part III is entitled "Appeals and Administration" and consists of sections 184-205. Section 188 of the Accord Act states that the Board may appoint safety and conservation officers necessary for the administration and enforcement of that part of the Accord Act. Included in the powers of these officers is the ability to require the production of any books, records, documents, licences, or permits; see subsection 189(d) of the Accord Act.

[81] Pursuant to subsection 193(1) of the Accord Act, these officers may also order the cessation of unsafe operations. Such orders are reviewable by the Chief Safety Officer under the Accord Act, and may also be referred to a provincial court judge in the jurisdiction closest to the area where the operations are being carried out; see subsections 193(4) and (5).

[82] In my opinion, these prescribed duties and powers are the types of administrative and enforcement activities that may require disclosure of privileged information as contemplated by subsection 119(2) of the Accord Act.

[83] I acknowledge that safety is a concern of the Board, and that there is a public interest in the safe operation of offshore petroleum operations. However, the public interest alone does not justify disclosure of reports and information generated by offshore petroleum operators. Subsection 119(2) establishes a privilege against disclosure, unless disclosure is required for the

administration and enforcement of the Accord Act. The Board's interpretation of subsection 119(2) of the Accord Act arises from an overly broad reading which the language of that provision cannot bear. The Applicant is not generally accountable to the public and is entitled to the protection of both the Access Act and the Accord Act.

[84] In my opinion, the Board has erred in its interpretation of subsection 119(2) of the Accord Act, and the application for judicial review will be allowed.

[85] The decision of the Board is set aside and pursuant to subsection 24(1) of the Access Act, the Board shall not disclose the records in issue.

[86] The Applicant is entitled to its taxed costs.

[87] The parties shall advise the Court within fourteen (14) days as to what redactions, if any, are required before Public Reasons are released.

"E. Heneghan"
Judge

Vancouver, British Columbia
December 19, 2014

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-511-13
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