



Report of Findings: 24/25-AP-111 Municipalité des Hautes-Terres

July 25, 2025

Citation: Municipalité des Hautes-Terres (Re), 2025 NBOMBUD 2

Summary: The Applicant asked the Municipalité des Hautes-Terres to provide information in the form of “invoices, proofs of payment or other financial details concerning expenses incurred” with respect to complaints filed against a particular municipal councillor. The Municipality refused to disclose the information under section 27(a) (legal privilege). The Ombud found that the information concerning non-legal services provided by a third party (consulting firm) retained by the Municipality’s attorney is not covered by the solicitor-client privilege exception. The Ombud also found that the Municipality could invoke the solicitor-client privilege exception to protect its communications with its lawyer, although the total amounts of the lawyer’s invoices are not protected because disclosing these details is “neutral” and does not reveal any privileged communications, either directly or indirectly. The Ombud recommends that the Municipality disclose the relevant invoices and related proofs of payment, with the appropriate redactions made to protect any sensitive information that may also be contained in the relevant documents.

Statutes Considered:

[Right to Information and Protection of Privacy Act](#), SNB 2009, c. R-10.6, section 27(a).

Authorities Considered: [Alberta \(Information and Privacy Commissioner\) v. University of Calgary](#), 2016 SCC 53 (CanLII), [2016] 2 SCR 555; [Solosky v. The Queen](#), 1979 CanLII 9 (SCC), [1980] 1 SCR 821; Information Commissioner of Canada, [Section 23: Solicitor-client privilege](#) (last modified on February 27, 2023); [Stevens v. Canada \(Prime Minister\) \(T.D.\)](#), 1997 CanLII 4805 (FC), [1997] 2 FC 759; [Weiler v. Canada \(Department of Justice\) \(T.D.\)](#), 1991 CanLII 13609 (FC), [1991] 3 FC 617; [Descôteaux et al. v. Mierzwinski](#), 1982 CanLII 22 (SCC), [1982] 1 SCR 860; [New Brunswick \(Attorney General\) \(Re\)](#), 2018 NBOMB 6 (CanLII).

INTRODUCTION

[1] The Municipalité des Hautes-Terres (“the Municipality”) was asked under the *Right to Information and Protection of Privacy Act* (“the *Act*”) to provide information in the form of invoices, proofs of payment or other financial details concerning expenses incurred with respect to complaints filed against a particular municipal councillor.

[2] In its response to the Applicant, the Municipality explained that it was refusing and declining the request because it had entrusted its lawyers with the task of managing complaints against the councillor in question and it refused to disclose any documents from its lawyers. According to the Municipality, the Applicant is seeking confidential documents produced by its lawyers for the purpose of addressing complaints filed against the councillor.

[3] The Municipality refused to disclose the documents under section 27(a) (legal privilege). Dissatisfied with the Municipality’s response, the Applicant filed a complaint with the Office of the Ombud (“the Office”). The matter was not resolved informally. Consequently, the Ombud decided to conduct a formal investigation under subsection 68(3) of the *Act*.

ISSUES

[4] The issues before me are whether the Municipality can invoke the legal privilege exception to refuse to disclose non-legal financial documents prepared by a third party retained by the Municipality’s lawyer, as well as the lawyer’s invoices, proofs of payment and other financial details.

[5] The information in question concerns an investigation into complaints filed against a municipal councillor under the Municipality’s code of conduct bylaw for elected council members.

[6] Under subsection 84(1) of the *Act*, the Municipality has the burden of proof to show that the Applicant has no right of access to the requested information.

APPLICANT’S REPRESENTATIONS

[7] The Applicant indicated that he was dissatisfied with the reasons put forward by the Municipality in refusing to disclose the requested information because, in the Applicant’s view, the request focused exclusively on financial aspects, i.e. the costs incurred with respect to legal services with respect to complaints against the councillor in question. The Applicant was not seeking any details of the communications between the Municipality and its lawyers because he understood that those details are protected.

[8] The Applicant was interested in knowing the expenses incurred as they involve public money.

MUNICIPALITY'S REPRESENTATIONS

[9] The Municipality maintained throughout the review of this complaint that the Applicant is not entitled to access the information in question because it is subject to solicitor-client privilege.

[10] The Municipality maintains that it entrusted its lawyer with managing complaints filed against the councillor in question. The Municipality's lawyer retained the services of a third party consulting firm to investigate those complaints.

[11] The Municipality maintains that it only paid its own lawyer and does not have copies of any invoices submitted by the consulting firm that conducted the investigation.

[12] The Municipality refused to provide copies of the documents in question for review and refused to obtain a copy of the invoice submitted by the consulting firm to the Municipality's lawyer for payment of this investigation, stating that these documents were protected by solicitor-client privilege.

[13] In support of this position, the Municipality's lawyer cited the Supreme Court of Canada's reasoning in *Alberta (Information and Privacy Commissioner) v. University of Calgary*,¹ which dealt with the importance of protecting solicitor-client privilege as essential to the proper functioning of the legal system while upholding access-to-information rights, which are a cornerstone of a healthy democracy.

[14] In addition, the Municipality stated that the councillor specified in the complaint filed a legal action with the court against the Municipality about the underlying situation and that this matter has not yet been concluded. For this reason, the Municipality was unwilling to provide the requested details under these circumstances.

DECISION

[15] For the following reasons, I find that the Municipality was entitled to claim legal privilege under paragraph 27(a) of the *Act* with respect to details of the legal invoices, which would reveal information protected by solicitor-client privilege, such as details of specific services provided by the solicitor on the Municipality's behalf. However, the

¹ [*Alberta \(Information and Privacy Commissioner\) v. University of Calgary*](#), 2016 SCC 53 (CanLII), [2016] 2 SCR 555.

Municipality failed to comply with its obligations in refusing to disclose the expenses incurred with respect to the code of conduct investigation.

ANALYSIS AND FINDINGS

Section 27: Legal privilege

[16] The Municipality relied on section 27(a) of the *Act* in refusing to disclose the requested information.

[17] This exception is designed to recognize and protect privileged communications between lawyers and clients when the latter receive legal advice or services.

[18] The legal test for solicitor-client privilege requires that three elements be present:

- there must be a communication between a lawyer and a client;
- the communication must involve a consultation or a legal opinion; and
- the communication must be intended to be confidential by the parties.²

[19] Section 27 of the *Act* is a discretionary exception to disclosure, which means that a public body may decide to disclose the information or not. This is consistent with the principle that communications between client and attorney belong to the client. The public body may decide to waive the privilege and disclose the information to the Applicant or refuse to share it.

[20] During the review of this complaint, the Municipality was asked to provide additional details about the appointment process for the consulting firm tasked with investigating the complaints against the councillor and further explain its reasons for refusing access.

[21] In this regard, the Municipality was asked to reconsider its position on disclosing the requested information. Two options were suggested to the Municipality:

- Asking the lawyer to provide a copy of the invoice submitted by the consulting firm for its investigative services and to provide a copy to the Applicant with appropriate redactions; or
- Re-examining the documents that the Municipality has on file with a view to assess what meaningful information it could provide to the Applicant.

² [Solosky v. The Queen](#), 1979 CanLII 9 (SCC), [1980] 1 SCR 821, p. 837.

[22] The Municipality responded through its lawyer, who maintained that the requested information is subject to solicitor-client privilege under section 27(a) of the *Act*. Although this exception is discretionary, the Municipality added that it is unwilling to exercise its discretion in favour of disclosure in this case.

[23] As for the Municipality invoking the Supreme Court's decision in *University of Calgary*, I recognize that solicitor-client privilege plays a fundamental role in the proper functioning of the legal system and should not be interfered with unless absolutely necessary. However, I am of the opinion that *University of Calgary* is not relevant to the matter at hand.

[24] The Supreme Court's decision in *University of Calgary* focused on the question of whether the Alberta law granted an independent oversight body the power to require the production of information when solicitor-client privilege had been raised. This is not the issue I have been asked to address in this case.

[25] I do not support the Municipality's arguments for the following reasons.

a) Invoices and other financial information issued by the consulting firm

[26] During this investigation, I noted that the Municipality asked its lawyer to handle complaints filed against the named municipal councillor. The Municipality's lawyer then retained the services of a third-party consulting firm to conduct an investigation under the Municipality's code of conduct. The consulting firm billed the lawyer directly and not the Municipality. Consequently, the lawyer billed the Municipality for the services provided by the consulting firm in connection with this matter. The relevant invoices included services provided by the consulting firm, as well as legal advice or services provided by the Municipality's lawyer.

[27] For information to be subject to solicitor-client privilege, the Supreme Court of Canada ruled that the documents must be a confidential communication between **a lawyer and a client**, carried out for the purposes of requesting, formulating or providing **a legal opinion or assistance**.³

[28] In this case, the information related to the investigation conducted by the consulting firm is not information between the Municipality and its lawyer and does not involve legal opinions or assistance. The consulting firm's work did not involve providing

³ Information Commissioner of Canada, [Section 23: Solicitor-client privilege](#) (last modified on February 27, 2023); [Stevens v. Canada \(Prime Minister\) \(T.D.\)](#), 1997 CanLII 4805 (FC), [1997] 2 FC 759; [Weiler v. Canada \(Department of Justice\) \(T.D.\)](#), 1991 CanLII 13609 (FC), [1991] 3 FC 617; [Descôteaux et al. v. Mierzewski](#), 1982 CanLII 22 (SCC), [1982] 1 SCR 860.

a legal opinion but rather it was conducting an investigation into violations of the code of conduct by a councillor. Indeed, the Municipality could have hired the same consulting firm of its own accord to conduct the investigation without retaining the services of a lawyer.

[29] I find that the financial information concerning payments to the consulting firm that conducted the investigation is not subject to solicitor-client privilege and must be disclosed to the Applicant.

b) Invoices and other financial information issued by the Municipality's attorney

[30] The analysis of invoices and proofs of payment for services provided by the Municipality's lawyer requires a different approach because they relate to the professional relationship between the Municipality and its lawyer.

[31] Information on invoices for legal services is presumed to be privileged unless the disclosure is "neutral" and does not reveal any privileged communications, either directly or indirectly.⁴

[32] To determine whether this presumption is rebutted, the following two questions must be asked:

- Is there a reasonable possibility that disclosure of the fee payment amount could directly or indirectly disclose communications protected by solicitor-client privilege?
- Could an assiduous inquirer, aware of background information, use the requested information to deduce or otherwise acquire privileged communications?

[33] If the answer to either or both of those questions is yes, the legal fees may be protected by solicitor-client privilege under section 27(a) of the *Act*. If the answer to both questions is no, then the presumption is rebutted and the information cannot be withheld.

[34] In applying the above criterion to this matter, I note that the Municipality indicated that it was refusing access to all relevant information, including invoices submitted by its

⁴ [*New Brunswick \(Attorney General\) \(Re\)*](#), 2018 NBOMB 6 (CanLII), paras. 38 to 40.

lawyer with respect to the complaint against the councillor in question and the corresponding proofs of payment, for the following reasons:

- the invoices and payment documents are included in the information protected by solicitor-client privilege; and
- the councillor in question filed a case with the court against the Municipality, following the investigation process undertaken by the Municipality's lawyers, and the court case is still ongoing.

[35] Although the Municipality refused to provide the relevant documents for review, I recognize that the invoices for legal services inherently contain information subject to solicitor-client privilege because this information sets out the details and nature of the work performed.

[36] Insofar as the invoices for legal services in this particular case contain details on specific steps taken by the lawyer to provide legal advice and services to the Municipality in connection with the code of conduct investigation, I believe that this information is subject to solicitor-client privilege.

[37] Nevertheless, I am not of the opinion that the amounts paid by the Municipality for its lawyer's services in connection with the code of conduct investigation are entitled to the same protection.

[38] In my view, the amount of fees incurred for the code of conduct investigation, including amounts that the Municipality paid to its lawyer for legal services related to that investigation, is "neutral" information. I cannot imagine how an assiduous inquirer who is familiar with the relevant context could use this information to deduce or otherwise acquire any privileged communications.

[39] In my opinion, the presumption that the total amounts listed in the invoices submitted by the Municipality's lawyer and the corresponding proofs of payment are subject to solicitor-client privilege is rebutted. The total amounts and proofs of payment may be disclosed without revealing any privileged communications, either directly or indirectly.

c) Legal proceeding underway

[40] The Municipality also noted that the councillor in question filed an action with the Court challenging the outcome of the code of conduct investigation and the

Municipality's subsequent decision. The Municipality indicated that this legal proceeding is ongoing and it is unwilling to disclose the requested information.

[41] In the matter of *Lizotte v. Aviva Insurance Company of Canada*, the Supreme Court of Canada confirmed that a document is protected by litigation privilege if it was created in contemplation of litigation, with there being a reasonable prospect for litigation, and for the dominant purpose of being used in litigation.⁵

[42] Although the Municipality indicated that litigation is underway, I note that the Municipality has not established that the withheld information was prepared or gathered for the dominant purpose of litigation. Rather, the Municipality is required to handle code of conduct complaints filed against council members under the *Local Governance Act*.

[43] The details provided to this Office by the Municipality indicate that the lawyer's final invoice with respect to the investigation was submitted several months before the councillor in question filed legal action with the court concerning the outcome of that investigation.

[44] The fact that there is litigation underway and that there is a related legal proceeding before the court are not decisive when determining access rights to the requested information. The requested information was not created for litigation purposes. Therefore, I note that the requested financial details are not protected by litigation privilege.

FINDINGS

[45] Before concluding this Report, I would like to take this opportunity to remind public bodies that they cannot avoid their transparency obligations under the *Act* simply by entrusting a lawyer with tasks that they themselves are required to carry out and then invoking solicitor-client privilege to protect all the related details.

[46] Although public bodies have wide discretionary powers in deciding whether and when to retain the services of a lawyer, they are also required to take into account the impact such decisions could or should have on the public's right to know and to understand how public business is conducted on behalf of the citizens to which public bodies are accountable.

⁵ [*Lizotte v. Aviva Insurance Company of Canada*](#), 2016 SCC 52 (CanLII), [2016] 2 SCR 521.

[47] It is equally important for legal professionals to fully grasp the quasi-constitutional nature of the access-to-information rights set out in the *Act* when they are asked to advise clients on matters that could have an impact on these democratic rights.

RECOMMENDATION

[48] Based on the above findings, I recommend under section 73(1)(a)(i)(A) of the *Act* that the Municipality disclose to the Applicant the relevant invoices and related proofs of payment, with appropriate redactions made to protect any sensitive information that may also be contained in the relevant documents.

[49] As set out in section 74 of the *Act*, the Municipality must provide the Applicant and the Office with written notice of its decision regarding these recommendations within 20 business days of receipt of this Report.

This Report is issued in Fredericton, New Brunswick this 25th day of July 2025.

Marie-France Pelletier
Ombud for New Brunswick