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### **FEDERAL ACCESS TO INFORMATION AND PRIVACY LEGISLATION ANNOTATED**

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## Highlights

**Part 1 Access to Government Records/Partie 1 Accès Aux Documents De L'Administration Fédérale – B. Exemptions/Exceptions – 1. Responsibilities of Government/Responsabilités de l'État – n. Section 18.1 Economic interests of certain government institutions/Intérêts économiques de certaines institutions fédérales – (1) General – § 1:270.** [Section 18.1 Economic interests of certain government institutions/Intérêts économiques de certaines institutions fédérales] – The case *Export Development Canada v. Canada (Information Commissioner)*, 2023 FC 1538 has been added to the text. This case lays out the exceptions under subsection 18.1(1) of the ATIA. At [23, 83] per Honourable Madam Justice Tsimberis: “the exemptions under subsection 18.1(1) of the ATIA are discretionary”. . . “the four elements which must all be met for information which a crown corporation is able to properly exercise its discretion in refusing to disclose under subsection 18.1 of the ATIA are: (1) Trade secrets or financial, commercial, scientific or technical information as those terms are commonly understood; (2) Which has a reasonable nexus between the information requested and the Corporation’s economic interests; (3) Belonging to one of the corporations listed in subsection 18.1(1); and (4) Has been treated consistently in a confidential manner.

**Part 1 Access to Government Records/Partie 1 Accès Aux Documents De L'Administration Fédérale – B. Exemptions/Exceptions – 2. Third Party Information/Renseignements de Tiers – a. Section 20 Third Party Information/Renseignements de Tiers – (2) Commentary – § 1:336.50 “Sections 20(1)(c) and (d)—Harm-based exemptions”** – A new heading has been added. Under this heading, the author discusses the case *American Iron & Metal Company Inc. v. Saint John Port Authority*, 2023 FC 1267 in which the judge reiterates that onus is on the party invoking paragraph 20(1)(b), paragraphs 20(1)(c) or (d) to establish a reasonable expectation of probable harm arising from the disclosure of the information. To satisfy this burden, the party must demonstrate a clear and direct linkage between the disclosure and the alleged harm. Affidavit evidence simply attesting that harm will result is insufficient to discharge the burden.

**Section title updates** – Throughout the text, there have been numerous updates to the section titles. For instance, section § 1:116 has been updated to read “Commentary: Bad Faith Requests”, § 1:118 has been updated to “Commentary: Frustration of Right of Access. Systemic Delay procedures”, § 3:16 has been updated to read “President of TB waived all fees except application fee”

### **ProView Developments**

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