ACCESS TO INFORMATION

Appeal from Federal Court decision (2016 FC 117) dismissing judicial review of respondent Canada-Newfoundland and Labrador Offshore Petroleum Board's decision to disclose names of two of appellant's employees contained in records responsive to access to information request — Request pertaining to previous requests for geophysical and geological information made by companies to the Board — Issues herein pertaining to proper standard of review; whether names, titles of appellant's employees, in the context of the requested records, "personal information" under *Access to Information Act*, R.S.C., 1985, c. A-1, s. 19(1) (which incorporates meaning of "personal information" under the *Privacy Act*, R.S.C., 1985, c. P-21, s. 3); and whether Board erred in finding that "personal information" at issue was publicly available, and could be disclosed — *Per* de Montigny J.A.: In *Blank v. Canada (Justice)*, 2016 FCA 189, Federal Court of Appeal concluding that the applicable standard of appellate review of a Federal Court judge's decision in a judicial review under *Access to Information Act*, s. 41 is the standard generally used in appeals of judicial review proceedings, as set out in *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559 — Respondent Information Commissioner's argument *Agraira* not overturning previous decision in *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3, [2012] 1 S.C.R. 23 regarding the distinct standard of appellate review to be applied in judicial review cases under the *Access to information Act* rejected herein — No compelling reason to distinguish between the judicial review by a superior court of a decision made by a government official and of that made by an administrative tribunal when determining standard of review to be applied by an appellate court — On the issue of whether the names, titles of the appellant's employees, in the context of the requested records, were "personal information" under *Access to Information Act*, the opening words of the definition of "personal information" reveal that the information that can be considered "personal information" must relate to an "identifiable individual" — It is only when a name can be associated with other personal information that its disclosure will be considered off-limits — While names appearing on documents will always reveal something about an individual, such a broad test cannot be the standard to determine when the name on a document shall not be disclosed — Illustrations found in paragraphs (a) to (h) under the definition of "personal information" in *Privacy Act*, s. 3 can all be said to relate to the intimacy and the core identity of an individual, and refer to the type of information the dissemination of which a person would prefer to control — In the case at bar, the information that would be conveyed about the appellant's employees if their names on the records sought were to be disclosed was of little import, and could hardly be the type of information that is integral to their dignity or identity, over which they would want to retain control — Accordingly, the names and titles of the appellant's personnel, in the context of the requested records, did not meet the definition of "personal information" in the *Privacy Act* — As to whether the "personal information" at issue was publicly available and could be disclosed, the appellant failed to show that the Board erred, either in fact or in law, in finding that the information was not publicly available or in exercising its discretion to allow the disclosure of the information — *Per* Gauthier J.A. (concurring reasons): The appellant did not meet its burden of establishing that the Board's decision to disclose the documents at issue without the deletion requested by the appellant was unreasonable — However, on the issue of whether the names and titles of the appellant's employees are "personal information" , one should be particularly careful in cases involving personal information and/or interpretations of the relevant provisions of the *Access to Information Act* and the *Privacy Act,* not to

venture into matters that are not strictly necessary to decide an appeal —While there may be circumstances where judicial minimalism is not the best approach, this was not one of them — Context is everything in matters such as this one, and every such case should be dealt with on a case-by-case basis without attempting to define a general approach other than that set out in the relevant legislation — This appeal could be determined on the sole basis of whether or not the appellant established a reviewable error in the decision of the Board pursuant to the *Access to Information Act*, s. 19(2) — There was no need to embark on a discussion of the other matters raised, such as the applicable standard of review — The position of the respondents was that the limited correspondence at issue with the identifiers revealed no more personal information about the employees than what was already publicly available — This was a question of mixed fact and law in respect of which crucial factual elements were missing from the record — This was sufficient to dismiss the appeal — Appeal dismissed.

HUSKY OIL OPERATIONS LIMITED V. CANADA-NEWFOUNDLAND AND LABRADOR OFFSHORE PETROLEUM BOARD (A-75-16, 2018 FCA 10, de Montigny and Gauthier JJ.A., judgment dated January 12, 2018, 34 pp.)