

# ALBERTA

## OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

### DECISION F2013-D-01 Supplementary Reasons to Order F2012-09

August 6, 2013

#### ALBERTA TREASURY BRANCHES

Case File Number F5419

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** Alberta Treasury Branches sought judicial review of Order F2012-09. The Court determined that the issue of whether section 36(3) of the *Alberta Treasury Branches Act* (ATBA) affected the interpretation of section 4(1)(r) had not been addressed in Order F2012-09. The Court declined to decide this issue in the first instance. The Court therefore remitted the following issue to the adjudicator for decision:

The issue of section 36(3) of the Alberta Treasury Branches Act, R.S.A. 2000, c. T-7 be remitted to Adjudicator Cunningham.

The Adjudicator determined that section 36(3) is a transitional provision. The Adjudicator found that the reference to “a treasury branch” in section 36(3) of the ATBA is a reference to a branch of the Treasury Department under the former *Treasury Branches Act*. The *Treasury Branches Act* was repealed when the ATBA came into force.

The Adjudicator noted that the general purpose of transitional provisions is to provide how a new Act applies to situations that arose before the coming into force of the Act that are affected by its passage.

She found that section 36 of the ATBA is intended to establish how the ATBA applies to situations that arose before the coming into force of the ATBA.

She decided that section 36(3) is intended to encompass all references to the former branch of the Treasury Department known as Government of Alberta Treasury Branches that may occur in enactments, agreements, documents, regulations or orders, and to deem those references to be references to the new Crown Corporation established by section 2 of the ATBA: Alberta Treasury Branches.

She found that section 36(3) does not apply to section 4(1)(r) of the FOIP Act, as section 4(1)(r) does not refer to a treasury branch as a branch of the Treasury Department created under the former *Treasury Branches Act*, but to a treasury branch created under the ATBA.

**Statutes Cited: AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 4, 10; *Alberta Treasury Branches Act*, R.S.A. 2000, c. T-7, ss. 1, 2, 10, 36, 40 *Interpretation Act* R.S.A. 2000 c. I-8, ss. 28; *Treasury Branches Act*, R.S.A. 1980 c. T-7 ss. 1, 2

**Authorities Cited: AB:** Order 99-033, F2012-09

**Cases Cited:** *Medovarski v. Canada (Minister of Citizenship and Immigration)*; *Esteban v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51; *York Condominium Corporation No. 382 v. Jay-M Holdings Limited*, 2007 ONCA 49; *Alberta (Treasury Branches) v. Ghermezian*, [1999] A.J. No. 1023; *Alberta (Treasury Branches) v. Ghermezian*, [2000] A.J. No. 963

## I. BACKGROUND

[para 1] Section 4(1)(r) of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) states:

*4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:*

*(r) a record in the custody or control of a treasury branch other than a record that relates to a non-arm's length transaction between the Government of Alberta and another party[...]*

[para 2] In Order F2012-09 I determined that a treasury branch within the terms of section 4(1)(r) is a treasury branch established under section 10 of the ATBA by reference to section 28(1)(ddd) of the *Interpretation Act*.

[para 3] Section 28(1)(ddd) of the *Interpretation Act* states:

*28(1) In an enactment,*  
*(ddd) "treasury branch" means a treasury branch within the meaning of the Alberta Treasury Branches Act;*

[para 4] Section 1(k) of the *Alberta Treasury Branches Act* (ATBA) defines the term “treasury branch”. This provision states:

*In this Act,*

*(k) “treasury branch” means a treasury branch established under section 10, whether the branch carries on business with the public directly or serves as an administrative or head office[...]*

I also determined that a treasury branch within the terms of section 4(1)(r) of the FOIP Act, is not synonymous with “Alberta Treasury Branches”, which is a Crown Corporation created under section 2 of the ATBA, and not section 10 of that Act. I determined that records in the custody or control of Alberta Treasury Branches that are not also in the custody or control of a treasury branch would not be subject to the exemption created by section 4(1)(r). I ordered Alberta Treasury Branches to assist the Applicant within the terms of section 10(1) of the FOIP Act, by determining whether there would be records responsive to the access request in the custody or control of Alberta Treasury Branches, but not “a treasury branch,” and by conducting an adequate search for such records if it determined that there were.

[para 5] Alberta Treasury Branches sought judicial review of Order F2012-09. The Court determined that the issue of whether section 36(3) of the ATBA affected the interpretation of section 4(1)(r) had not been addressed in Order F2012-09. The Court declined to decide this issue in the first instance. The Court therefore remitted the following to me for decision:

The issue of section 36(3) of the Alberta Treasury Branches Act, R.S.A. 2000, c. T-7 be remitted to Adjudicator Cunningham.

Section 36(3) of the ATBA states:

*36(3) A reference in any enactment, agreement, document, regulation or order to “treasury branch”, “Treasury Branch”, “Alberta treasury branch”, “Alberta Treasury Branch”, “Province of Alberta Treasury Branch”, or any other designation determined by the Minister, shall be read as a reference to “Alberta Treasury Branches”.*

[para 6] The AUPE and Alberta Treasury Branches both provided initial and rebuttal submissions regarding the issue. This decision contains my conclusions regarding the application of section 36(3) as ordered by the Court.

## **II. ISSUE**

**Does section 36(3) of the *Alberta Treasury Branches Act* apply so as to affect the interpretation of section 4(1)(r) of the *Freedom of Information and Protection of Privacy Act*?**

## **III. DISCUSSION OF ISSUE**

[para 7] In Order 99-033, former Commissioner Clark drew support from section 36(3) of the Alberta Treasury Branch Act (ATBA) for his view that treasury branches and Alberta Treasury Branches cannot be distinguished from each other for the purposes of what is now section 4(1)(r) of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act). He said:

In my view, the definition of "treasury branch" focuses on the business structure of the Alberta Treasury Branches system, rather than on a particular business location of a treasury branch (i.e., a "treasury branch facility", as defined by section 1(1) of the Alberta Treasury Branches Act). Because the Public Body operates the entire system, I do not believe that a treasury branch can be considered to be an entity separate and distinct from the Public Body. It follows that the records produced anywhere within the Alberta Treasury Branches system cannot be considered to be within the custody or control of any particular treasury branch facility.

I conclude that a record in the custody or control of a treasury branch refers to a record located anywhere within the Alberta Treasury Branches system, including a record located at the head office of the Public Body.

I further find that the Public Body is a treasury branch for the purposes of section 4(1)(m). I am reinforced in this view by section 36(3) of the Alberta Treasury Branches Act, which reads:

36(3) A reference in any enactment, agreement, document, regulation or order to "treasury branch", "Treasury Branch", "Alberta treasury branch", "Alberta Treasury Branch", "Province of Alberta Treasury Branch", or any other designation determined by the Minister, shall be read as a reference to "Alberta Treasury Branches".

[para 8] At paragraphs 32 and 33 of Order F2012-09 I provided reasons for disagreeing with the foregoing analysis. I stated at paragraph 33:

I disagree with the former Commissioner Clark's analysis, as it does not attribute to the phrase "a treasury branch" the definition imposed by section 28(1)(ddd) of the *Interpretation Act*, which would apply to the phrase "a treasury branch" in section 4(1)(r) of the FOIP Act. Moreover, his analysis does not acknowledge that there is a distinction between Alberta Treasury Branches consisting of, and operating through, its board of directors, and a treasury branch operating on behalf of Alberta Treasury Branches through its employees.

However, I did not provide reasons as to why I do not believe that section 36(3) of the ATBA can be interpreted so as to support the former Commissioner's view, which he expressed in Order 99-033, that a treasury branch and Alberta Treasury Branches cannot be meaningfully distinguished. I am now providing those reasons.

*What is the function of section 36(3) of the ATBA?*

[para 9] Section 36 of the ATBA states:

*36(1) Persons who are members of the board of directors under The Treasury Branches Act are continued as members of the board under this Act until their appointments expire or are terminated under this Act.*

*(2) The Superintendent of Treasury Branches under the Treasury Branches Act is the Chief Executive Officer under this Act and is deemed to have been appointed under section 6.*

*(3) A reference in any enactment, agreement, document, regulation or order to “treasury branch”, “Treasury Branch”, Alberta treasury branch”, “Alberta Treasury Branch”, “Province of Alberta Treasury Branch” or any other designation determined by the Minister, shall be read as a reference to “Alberta Treasury Branches”.*

*(4) A legal or administrative proceeding by or against Alberta Treasury Branches as it existed under the Treasury Branches Act, under any of the designations referred to in subsection (3) may be continued by or against Alberta Treasury Branches.*

*(5) A reference in any enactment, agreement, document, regulation or order to the Superintendent of Treasury Branches shall be read as a reference to the Chief Executive Officer.*

*(6) All by-laws made under section 2.4(1)(b) of the Treasury Branches Act are continued as by-laws under this Act.*

*(7) All by-laws made under section 2.4(1)(a) of the Treasury Branches Act are repealed.*

*(8) The Treasury Branches Regulation (AR 108/96) is repealed.*

[para 10] For the reasons that follow, I find that section 36(3) of the ATBA deems references in enactments, agreements, documents, regulations, orders, or designations made by the Minister under the former *Treasury Branches Act* R.S.A. 1980 c. T-7 (the *Treasury Branches Act*) to be references to Alberta Treasury Branches under the ATBA.

[para 11] The former Commissioner used section 36(3) as an aid to interpret section 4(1)(r) of the FOIP Act, with the result that he decided that the reference to “a treasury branch” in this provision, was a reference to “Alberta Treasury Branches” as a public body. Alberta Treasury Branches argues in support of this approach to the interpretation of section 4(1)(r).

[para 12] While the former Commissioner’s reasons for finding that section 36(3) supported his interpretation are not included in Order 99-033, I infer that he considered section 36(3) to refer to the scheme introduced by the ATBA when it came into force on October 8, 1997, as opposed to the scheme that existed prior to its coming into force. He reasoned that if a reference in an enactment to a treasury branch is a reference to Alberta Treasury Branches, this provision would also apply to the FOIP Act, given that the FOIP Act is an enactment. I will therefore address whether section 36(3) can be interpreted or applied in this way.

[para 13] The modern principle of interpretation provides assistance in interpreting statutory provisions. The modern principle states:

Today there is only one principle or approach, namely, the words of an enactment are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

(From *Sullivan on the Construction of Statutes* 5<sup>th</sup> Edition (Markham: LexisNexis Canada Inc., 2008, p. 1)

[para 14] When interpreting a legislative provision, one must first consider the words in the enactment and the context in which they appear. Cited above, section 36(3) states:

*36(3) A reference in any enactment, agreement, document, regulation or order to “treasury branch”, “Treasury Branch”, Alberta treasury branch”, “Alberta Treasury Branch”, “Province of Alberta Treasury Branch” or any other designation determined by the Minister, shall be read as a reference to “Alberta Treasury Branches”.*

[para 15] Section 2(1) of the former *Treasury Branches Act* states:

*2(1) The Minister may, on behalf of the Crown, establish and operate branches of the Treasury Department at any place in Alberta that he selects.*

Under the former *Treasury Branches Act*, a “treasury branch” was established and operated by the Minister. Treasury Branches were branches of the Treasury Department of the Government of Alberta.

[para 16] In the scheme introduced by the ATBA, Alberta Treasury Branches is a Crown Corporation rather than a branch of a government department. The authority to create treasury branches now lies solely with the Board of Directors of Alberta Treasury Branches under section 10 of the ATBA, which states:

*10 Alberta Treasury Branches may establish and operate treasury branches at any location within Alberta.*

[para 17] There is no authority under the ATBA (the current statute) for the Minister to establish or operate treasury branches, or to determine their designations.

[para 18] Moreover, while section 1(l) of the *Treasury Branches Act*, enacted on September 6, 1996, defines “treasury branch” as meaning “an Alberta Treasury Branch” and section 1(f) of the version of the *Treasury Branches Act* enacted on January 31, 1984 defines “treasury branch” as meaning “a Province of Alberta Treasury Branch”, the terms listed in section 36(3) (i.e. “Treasury Branch”, “Alberta treasury branch”, “Alberta

Treasury Branch, and “Province of Alberta Treasury Branch” ) appear in the ATBA only in section 36(3), which is a transitional provision.

[para 19] Section 36 appears in the ATBA under the heading “Transitional Provisions”. Transitional provisions serve to “bridge the gap” that may result from the repeal of an old legislative scheme and the introduction of a new one.

[para 20] In *Medovarski v. Canada (Minister of Citizenship and Immigration)*; *Esteban v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51, the Supreme Court of Canada described the purpose of transitional provisions at paragraph 17 in the following way:

Transitional provisions are enacted to catch those who fall between the cracks created by two pieces of legislation. They ensure that these individuals are not left in legal limbo, uncertain of their rights and with no applicable law.

[para 21] In *York Condominium Corporation No. 382 v. Jay-M Holdings Limited*, 2007 ONCA 49, the Ontario Court of Appeal commented on the purpose of transitional provisions at paragraph 32:

The purpose of transitional provisions in general is to provide when a new Act applies and when it does not apply, or to provide for how it applies to situations that arose before the coming into force of the Act that are affected by its passage.

[para 22] Section 36 of the ATBA may be seen to explain how the ATBA will apply to situations arising before the ATBA came into force. Leaving aside the question of the application of section 36(3) for a moment, I note that each of the other subsections of section 36 addresses a situation arising prior to the enactment of the ATBA, and explains how the situation is to be resolved. For example, subsection (1) explains that the board of directors appointed under the *Treasury Branches Act* is continued as the board of directors under the ATBA. Subsection (2) establishes that the Superintendent of Treasury Branches under the *Treasury Branches Act* is now the Chief Executive Officer under the ATBA. Subsection (4) establishes that proceedings instituted prior to the coming into force of the ATBA may be continued by or against Alberta Treasury Branches. Subsections (5) and (6) determine which bylaws made under the former *Treasury Branches Act* will continue, and which are repealed. Subsection (7) repeals the former *Treasury Branches Regulation*. To return to section 36(3), given that the other provisions of section 36 refer to exercises of authority under the former *Treasury Branches Act*, and determines whether these exercises will continue to be valid on the enactment of the ATBA, it is reasonable to assume that section 36(3) fulfills this same function.

[para 23] In my view, section 36(3) is intended to encompass all references to the former branch of the Treasury Department known as Government of Alberta Treasury Branches that may occur in enactments, agreements, documents, regulations or orders, and to deem these references to be references to the new Crown Corporation established by section 2 of the ATBA: Alberta Treasury Branches. In this way, any rights, claims, or obligations existing prior to the coming into force of the ATBA would not be lost solely because the enactment or other existing document referred to the former branch of the

Treasury Department, rather than to the newly created Crown Corporation. If section 36(3) does not apply to treasury branches created under the former *Treasury Branches Act*, then such things as mortgage agreements, for example, would be left in limbo, by virtue of the fact that a reference to a treasury branch or Government of Alberta Treasury Branches as mortgagee in the document would be a reference to an entity that ceased to exist once the *Treasury Branches Act* was repealed.

[para 24] Section 36(4) of the ATBA supports this interpretation of section 36(3). Cited above, section 36(4) states:

*36(4) A legal or administrative proceeding by or against Alberta Treasury Branches as it existed under the Treasury Branches Act, under any of the designations referred to in subsection (3) may be continued by or against Alberta Treasury Branches.* [my emphasis]

Section 36(4) further advances the position that the references to designations in section 36(3), including the reference to “a treasury branch”, are references to designations under the former *Treasury Branches Act*, and not references to designations made under the legislative scheme introduced by the ATBA. I say this because the 36(4) clarifies that subsection (3) refers to designations created under the former *Treasury Branches Act*. The purpose of section 36(4) is to ensure that actions by or against the former branch of the Government of Alberta known as Alberta Treasury Branches instituted prior to the coming into force of the ATBA may be continued by or against the Crown Corporation created by section 2 of the ATBA.

[para 25] The parties drew to my attention *Alberta (Treasury Branches) v. Ghermezian*, [1999] A.J. No. 1023 in which the Alberta Court of Queen’s Bench interpreted section 36 of the ATBA. Moore C.J.Q.B. held at paragraph 94:

In my view the right to sue for fraud properly belongs to Alberta Treasury Branches by virtue of the provisions of the Act. The Act states:

36(3) A reference in any enactment, agreement, document, regulation, or order to treasury branch", "Treasury Branch", "Alberta treasury branch" "Province of Alberta Treasury Branch" or any other designation determined by the Minister, shall be read as a reference to "Alberta Treasury Branches".

(4) A legal or administrative proceeding by or against Alberta Treasury Branches as it existed under the *Treasury Branches Act*, under any of the designations referred to in subsection (3) may be continued by or against Alberta Treasury Branches.

37 The Lieutenant Governor in Council may designate one or more Ministers to enter into agreements with Alberta Treasury Branches respecting any or all of the following:

- (c) the transfer of property and assets from the Crown to Alberta Treasury Branches;
- (d) the assumption of obligations and liabilities by Alberta Treasury Branches from the Crown;
- (e) any other matter that is necessary or desirable to facilitate

- (i) the change in status of Alberta Treasury Branches from a division of the Treasury Department under the *Treasury Branches Act* to a corporation under the Act, and
- (ii) the carrying on of business by Alberta Treasury Branches as a corporation.

38 On the coming into force of this section, the property, assets, liabilities and obligations of the Treasury Branches Deposits Fund under the *Treasury Branches Act* become the property, assets, liabilities and obligations of Alberta Treasury Branches, subject to the same conditions.

When read as a whole, it is clear that the intention of the Act is that Alberta Treasury Branches assume the position of the former Province of Alberta Treasury Branch in all respects. The Act transfers all property relating to the Fund to ATB, and clearly states that ATB is the successor to all agreements executed by the former entity of the Province of Alberta Treasury Branch. In essence, ATB steps into the shoes of the Province of Alberta Treasury Branch in relation to all agreements to which the TB was a party, which includes the Loan Documents with West Edmonton Mall. This method of transferring the right to pursue a cause of action differs from a standard assignment by which parties sign an agreement to assign or transfer rights for consideration. ATB has acquired all rights formerly belonging to the Crown by virtue of the legislative mandate in the statute. As such, by operation of law ATB has succeeded to all the rights of the former Province of Alberta Treasury Branches, which includes the right to bring an action on the ground that such agreements were fraudulently induced. The corresponding right to this is to seek whatever relief is available at law, which would include the right to ask for rescission.

[para 26] The Alberta Court of Appeal expressly upheld the Court’s reasoning regarding the interpretation and application of the transitional provisions in *Alberta (Treasury Branches) v. Ghermezian*, [2000] A.J. No. 963 at paragraph 23. Both the Alberta Court of Queen’s Bench and the Alberta Court of Appeal have interpreted section 36, when viewed as part of the ATBA as a whole, to be a transitional provision intended to establish how actions begun under the repealed *Treasury Branches Act* are to continue following the enactment of the ATBA.

*The relationship between section 36(3) of the ATBA and section 4(1)(r) of the FOIP Act*

[para 27] Alberta Treasury Branches argues in rebuttal that the presence of section 36(3) is indicative of an intention on the part of the legislature that section 28(1)(ddd) of the *Interpretation Act* should not be used to interpret the term “a treasury branch” as it occurs in section 4(1)(r) of the FOIP Act:

Pursuant to s.3 of the *Interpretation Act*, if a contrary intention appears in the ATB Act the definition of the term “treasury branch” as found in s. 28 of the *Interpretation Act*, which states it to be as defined in the ATB Act, is of no application. The AUPE makes the statement without providing substantive reasons in its support, that a contrary intention does not exist at paragraph 47 of its Supplemental Submissions. ATB submits that the plain language of s. 36(3) is revealing of an express contrary intention. In this regard, ATB relies upon the British Columbia Court of Appeal’s decision in *Bank of Montreal v. Gratton*, [[1987] B.C.J. No. 1887] the ratio of which is that, in any event, a contrary intention need not be revealed through the use of express wording to that effect. As a result, although s. 36(3) is not stated to apply “notwithstanding the provisions of the *Interpretation Act*,” such language is not required. In any event, ATB submits that express wording – in any enactment” – does exist in these circumstances. The Interpretation Act is an enactment like any other. It is not immune from the effects of these words.

[para 28] AUPE notes that the *Interpretation Act* was amended as a consequence of the coming into force of the ATBA. The amendment came into force on the same day that the ATBA came into force. Cited above, section 28(1)(ddd) of the *Interpretation Act* now states:

*28(1) In an enactment,*

*(ddd) “treasury branch” means a treasury branch within the meaning of the Alberta Treasury Branches Act[...]*

[para 29] As cited above, section 1(k) of the ATBA states:

*1 In this Act,*

*(k) “treasury branch” means a treasury branch established under section 10, whether the branch carries on business with the public directly or serves as an administrative or head office [...]*

Section 28(1)(ddd) of the *Interpretation Act* deems references in enactments to treasury branches to be references to treasury branches as defined in the ATBA. The ATBA defines a treasury branch as a treasury branch established under section 10.

[para 30] I agree with AUPE that it would be illogical for the legislature to enact both section 36(3) of the ATBA and section 28(1)(ddd) of the *Interpretation Act* on the same day if its purpose in enacting section 36(3) was in part to ensure that section 28(1)(ddd) of the *Interpretation Act* had no application. Section 28(1)(ddd) would be gratuitous and in conflict with section 36(3) of the ATBA, if section 36(3) were intended to address how the phrase “a treasury branch”, where it refers to a treasury branch created under section 10 of the ATBA, is to be interpreted.

[para 31] If section 28(1)(ddd) of the *Interpretation Act* and section 36(3) of the ATBA both provide rules regarding the interpretation of the word “treasury branch” whenever it appears in an enactment of Alberta, then it would be necessary for the legislature to indicate which of these provisions takes precedence to avoid conflict. However, the legislature did not do so. In my view, this is because section 36(3) of the ATBA refers to a “treasury branch” created under section 2 of the former *Treasury Branches Act*, while section 28(1)(ddd) explicitly refers to a treasury branch created under the modern ATBA. I conclude that there is no overlap between the two provisions, given that they address different entities. Section 36(3) of the ATBA refers to a treasury branch that is a branch of the Government of Alberta Treasury Department; section 28(1)(ddd) of the *Interpretation Act* ensures that a reference to a “treasury branch” is a reference to a treasury branch under the current ATBA.

[para 32] I find that section 36(3) has no application to the interpretation of section 4(1)(r) of the FOIP Act. I say this because section 4(1)(r) refers to the modern scheme

created by the ATBA on October 8, 1997, and not to the scheme created by the former *Treasury Branches Act*. That this is so is evidenced by the fact that “Alberta Treasury Branches” was added as a public body to Schedule 1 of the Freedom of Information and Protection of Privacy Regulation (the Regulation) on September 29, 1999, when Alberta Regulation 216/99, which amended Alberta Regulation 200/1995, was filed. Schedule 1 of the Regulation contains a list of public bodies that are designated as public bodies for the purposes of section 1(p)(ii) of the FOIP Act. The designation of Alberta Treasury Branches, the Crown corporation, as a public body post-dates the coming into force of the ATBA. This designation after the coming into force of the ATBA indicates that the FOIP Act refers to the scheme created by the current ATBA, and not that created by the former *Treasury Branches Act*. Once section 28(1)(ddd) (previously section 25(1)(w)) of the *Interpretation Act* was enacted as an amendment consequential to the coming into force of the ATBA, section 4(1)(r) of the FOIP Act referred to a treasury branch as a branch of the Crown corporation, and not as a branch of the Treasury Department.

[para 33] While I agree with Alberta Treasury Branches that section 36(3) of the ATBA is intended to establish how the terms “treasury branch”, “Treasury Branch”, Alberta treasury branch”, “Alberta Treasury Branch”, “Province of Alberta Treasury Branch” or any other designation determined by the Minister are to be interpreted when they appear in an enactment, this provision’s application is limited by the fact that the terms and designations to which it refers are terms and designations under the former *Treasury Branches Act*. When it is necessary to determine how the current ATBA applies to situations arising prior to October 8, 1997, when the ATBA came into force, section 36(3) deems references to designations created under the former *Treasury Branches Act*, to be references “Alberta Treasury Branches”.

[para 34] As section 4(1)(r) of the FOIP Act does not refer to designations created under the former *Treasury Branches Act*, I find that section 36(3) has no application to the interpretation of section 4(1)(r) of the FOIP Act.

#### **IV. DECISION**

[para 35] I conclude that section 36(3) has no application in relation to section 4(1)(r) of the FOIP Act.

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Teresa Cunningham  
Adjudicator