

Bulletin

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**Access to
Information Act**

Privacy Act

Treasury Board Secretariat

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Note: This Bulletin is in large print to assist persons with visual disabilities.

**STATISTICAL
TABLES
1999-2000
ACCESS TO
INFORMATION**

Access to Information – 1999-2000
Disposition of Requests

Requests received		19,294
Requests completed	100.0%	18,489
(Includes requests brought forward from previous year)		
Disposition of requests completed:		
All disclosed	40.6%	7,491
Some disclosed	33.7%	6,234
No records disclosed – excluded	0.3%	62
No records disclosed – exempted	2.8%	521
Transferred	1.7%	306
Treated informally	2.3%	433
Could not be processed	18.6%	3,442
(Reasons include insufficient information provided by applicant, no records exist and abandonment by applicant)		

Access to Information – 1999-2000
Source of Requests

Requests received	100.0%	19,294
Public	40.7%	7,857
Business	32.0%	6,167
Media	14.4%	2,774
Organizations	11.9%	2,291
Academics	1.0%	205

Access to Information – 1999-2000
Ten Institutions Receiving Most Requests

Requests received by all institutions	100.0%	19,294
Citizenship and Immigration	24.5%	4,726
National Archives	11.0%	2,114
Health	7.2%	1,389
Human Resources Development	5.6%	1,073
National Defence	5.5%	1,063
Public Works and Government Services	3.8%	737
Royal Canadian Mounted Police	3.4%	661
Immigration and Refugee Board	3.3%	643
Canada Customs and Revenue Agency	3.1%	594
Foreign Affairs and International Trade	2.9%	561
Other Departments	29.7%	5,733

Access to Information – 1999-2000

Time Required to Complete Requests

Requests completed	100.0%	18,489
0 – 30 days	63.2%	11,686
31 – 60 days	16.4%	3,036
61 + days	20.4%	3,767

Access to Information – 1999-2000

Exemptions

Total exemptions	100.0%	16,155
Section 19 – Personal information	28.0%	4,526
Section 20 – Third party information	26.0%	4,177
Section 21 – Operations of government	17.6%	2,836
Section 16 – Law enforcement and investigations	6.8%	1,106
Section 23 – Solicitor-client privilege	5.5%	889
Section 15 – International affairs and defence	5.0%	801
Section 13 – Information obtained in confidence	4.6%	748
Section 14 – Federal-provincial affairs	2.3%	373
Section 18 – Economic interests of Canada	2.0%	326

Section 24 – Statutory prohibitions	1.4%	224
Section 22 – Testing procedures	0.3%	56
Section 17 – Safety of individuals	0.3%	53
Section 26 – Information to be published	0.2%	40

Access to Information – 1999-2000

Costs and Fees for Operations

Requests completed	18,489
Cost of operations	\$17,143,480
Cost per request completed	\$927
Fees collected	\$217,832
Fees collected per request completed	\$11.78
Fees waived	\$165,564
Fees waived per request completed	\$8.95

**STATISTICAL
TABLES
1999-2000
PRIVACY**

Privacy – 1999-2000
Disposition of Requests

Requests received		36,083
Requests completed	100.0%	37,800
(Includes requests brought forward from previous year)		
Disposition of requests completed:		
All disclosed	47.1%	17,804
Some disclosed	35.9%	13,564
No records disclosed – excluded	0.0%	8
No records disclosed – exempted	0.9%	327
Could not be processed	16.1%	6,097
(Reasons include insufficient information provided by applicant, no records exist and abandonment by applicant)		

Privacy – 1999-2000

Five Institutions Receiving Most Requests

Requests received by all institutions	100.0%	36,083
Human Resources Development	23.4%	8,443
National Defence	18.2%	6,579
Correctional Service	14.2%	5,127
National Archives	10.6%	3,814
Citizenship and Immigration	10.2%	3,673
Other Departments	23.4%	8,447

Privacy – 1999-2000

Time Required to Complete Requests

Requests completed	100.0%	37,800
0 – 30 days	63.3%	23,919
31 – 60 days	15.0%	5,661
61 + days	21.7%	8,220

Privacy – 1999-2000
Exemptions

Total exemptions	100.0%	17,246
Section 26 – Information about another individual	63.5%	10,962
Section 22 – Law enforcement and investigation	20.5%	3,531
Section 19 – Personal information obtained in confidence	7.9%	1,366
Section 24 – Individuals sentenced for an offence	3.2%	548
Section 27 – Solicitor-client privilege	2.2%	373
Section 21 – International Affairs and defence	1.7%	294
Section 23 – Security clearances	0.4%	64
Section 18 – Exempt banks	0.3%	52
Section 25 – Safety of individuals	0.2%	37
Section 28 – Medical records	0.1%	15
Section 20 – Federal-provincial affairs	0.0%	4

Privacy – 1999-2000
Costs and Fees for Operations

Requests completed	37,800
Cost of operations	\$9,671,744
Cost per request completed	\$256

**STATISTICAL
TABLES
1983-2000
ACCESS TO
INFORMATION**

Access to Information – 1983-2000
Disposition of Requests

Requests received		165,108
Requests completed	100.0%	160,061
(Includes requests brought forward from previous year)		
Disposition of requests completed:		
All disclosed	34.7%	55,619
Some disclosed	35.0%	55,898
No records disclosed – excluded	0.6%	986
No records disclosed – exempted	3.2%	5,180
Transferred	2.0%	3,237
Treated informally	5.3%	8,418
Could not be processed	19.2%	30,723
(Reasons include insufficient information provided by applicant, no records exist and abandonment by applicant)		

Access to Information – 1983-2000

Time Required to Complete Requests

Requests completed	100.0%	160,061
0 – 30 days	57.5%	92,067
31 – 60 days	17.9%	28,624
61 + days	24.6%	39,370

Access to Information – 1983-2000

Costs and Fees for Operations

Requests completed	160,061
Cost of operations	\$142,357,369
Cost per request completed	\$889
Fees collected	\$2,310,073
Fees collected per request completed	\$14.00
Fees waived	\$896,705
Fees waived per request completed	\$5.00

**STATISTICAL
TABLES
1983-2000
PRIVACY**

Privacy – 1983-2000
Disposition of Requests

Requests received		700,083
Requests completed	100.0%	694,943
(Includes requests brought forward from previous year)		
Disposition of requests completed:		
All disclosed	60.6%	421,438
Some disclosed	25.0%	174,043
No records disclosed – excluded	0.1%	120
No records disclosed – exempted	0.9%	6,029
Could not be processed	13.4%	93,313
(Reasons include insufficient information provided by applicant, no records exist and abandonment by applicant)		

Privacy – 1983-2000

Time Required to Complete Requests

Requests completed	100.0%	694,943
0 – 30 days	60.0%	416,467
31– 60 days	21.3%	147,887
61 + days	18.7%	130,589

Privacy – 1983-2000

Costs and Fees for Operations

Requests completed	694,943
Cost of operations	\$117,074,006
Cost per request completed	\$168

FEDERAL COURT CASES

*Prepared by the
Information Law and Privacy Section,
Department of Justice*

CUNHA V. MINISTER OF NATIONAL REVENUE
INDEXED AS: CUNHA V. CANADA
(MINISTER OF NATIONAL REVENUE – M.N.R.)

File No.: T-1023-98

References: [1999] F.C.J. No. 667 (QL)
(F.C.T.D.)

Date of Decision: March 5, 1999

Before: Reed J. (F.C.T.D.)

Section(s) of *ATIA / PA*: Ss. 14, 15, 16(3), 29(1), 41
Privacy Act (PA)

Abstract

- Delay in responding to request
- Application for declaration of breach of statutory right to receive response or be given notice of extension
- Complaint condition precedent to Court's jurisdiction
- S. 29(1) setting out circumstances of complaint
- Deemed refusal falling within s. 29(1)(h)(i)j25
- Court without jurisdiction as no complaint made

Issues

Whether the Court has jurisdiction to grant the relief sought in the absence of a complaint to the Privacy Commissioner and whether a deemed refusal can be the proper subject-matter of a complaint.

Facts

The applicant sought a declaration that his rights under s. 14 of the *Privacy Act* to receive a response within 30 days or to be given notice of an extension of time under s. 15 of the Act were infringed. The applicant made a request dated January 13, 1998 to obtain certain personal information from Revenue Canada. He was provided with the requested documents on July 8, 1998. The respondent argued that the issue of the applicant's rights under ss. 14 and 15 was now moot and that, in any event, the Court has no jurisdiction because the applicant did not make a complaint to the Privacy Commissioner. The declaration is sought as it would appear that there is no mechanism in the Act whereby the Privacy Commissioner can require compliance with the statutory time limit.

Decision

The application for a declaration was dismissed.

Reasons

The Court held that it was without jurisdiction to grant the remedy sought. Section 41 makes it clear that the Act contemplates complaints being made, first, to the Privacy Commissioner before any application for relief can be made to the Court. Since there had been no complaint in this case, the Court held that it was without jurisdiction to grant the remedy sought.

The Court started its analysis by referring to subs. 16(3) of the Act which provides that a failure to reply in accordance with the prescribed time limits constitutes a deemed refusal. It then proceeded to review subs. 29(1) which sets out the circumstances in which a complaint can be made to the Commissioner. It concluded that, although a deemed refusal was not one of the circumstances specifically listed in subs. 29(1), it nevertheless fell within subpara. 29(1)(h)(i) of the Act (that provision deals with the “collection, retention or disposal of personal information by a government institution”). The Court was of the view that this interpretation was consonant with the scheme of the Act and its context as whole. Actual refusals and breaches of the required time limits, as well as breaches of several other sections of the Act, are encompassed in subs. 29(1). According to the Court, this evidenced an intention to have responses to requests, including deemed refusals, reviewed first by the Privacy Commissioner before becoming the subject-matter of a court proceeding.

**INFORMATION COMMISSIONER OF CANADA V. MINISTER OF
INDUSTRY CANADA**
**INDEXED AS: CANADA (INFORMATION COMMISSIONER) V.
CANADA (MINISTER OF INDUSTRY)**

File No.: T-394-99

References: [1999] F.C.J. No. 567 (QL)
(F.C.T.D.)

Date of Decision: April 26, 1999

Before: Pelletier J. (F.C.T.D.)

Section(s) of *ATIA / PA*: S. 42 *Access to Information Act*
(*ATIA*)

Abstract

- Application by Information Commissioner for review
- Status of requester: party or intervenor
- Right to reply by way of affidavit

Issues

- (1) Should the requester be granted status as a party or as an intervenor when a subs. 42(1) application is made by the Information Commissioner?
- (2) Does the Information Commissioner have a right of reply by way of affidavit?

Facts

Following a request for information made on November 4, 1996, the Minister released certain information but still withheld a significant number of documents. The requester lodged a complaint on July 3, 1997 concerning the documents that were withheld. This led to more documents being released although the Minister maintained the position that certain information relating to the percentage weightings assigned to evaluation criteria used to assess proposals received by the Minister should be exempt from disclosure. The Commissioner sought the requester's consent to apply to the Court for a review of the Minister's decision, which consent was granted. The requester subsequently filed a Notice of Appearance as a Party exercising his right to be added as a party under subs. 42(2). The respondent requested that the requester be treated as an intervenor with specific limitations imposed upon his role in the proceeding. On the issue of affidavits, the Commissioner asks that he be given the right to submit affidavits in reply following receipt of the respondent's affidavit material.

Decision

The requester was added as a party.

Reasons

Issue 1

The Act specifies in subs. 42(2) that the requester shall be entitled to appear as a party, therefore the Court has no discretion to deal with the requester except as a party. The requester was granted the same rights as other parties with the following restrictions:

- (1) The requester was to limit himself to the issues raised by the Commissioner;
- (2) Neither the requester nor the Commissioner can each cover the same ground in their submissions and cross-examinations on affidavits;
- (3) The requester was not granted access to the confidential affidavits (access was to be granted to his counsel if he retained one according to the confidentiality order made by the Court).

Issue 2

The Information Commissioner should have the right to reply by way of affidavit. The function of the affidavit filed by the Commissioner at the initial stage of the application is to establish the fact and extent of non-disclosure. Once non-disclosure has been established, the onus of justifying non-disclosure lies with the respondent whose affidavit material sets out the basis of the refusal. The Commissioner ought then to have the opportunity to respond to the case made by the respondent.

**SHELDON BLANK & GATEWAY INDUSTRIES LTD. V. MINISTER
OF THE ENVIRONMENT
INDEXED AS: SHELDON BLANK & GATEWAY INDUSTRIES LTD.
V. CANADA (MINISTER OF THE ENVIRONMENT)**

File No.: T-1111-98

References: [1999] F.C.J. No. 571 (QL)
(F.C.T.D.)

Date of Decision: April 27, 1999

Before: Reed J. (F.C.T.D.)

Section(s) of *ATIA / PA*: S. 23 *Access to Information Act*
(*ATIA*)

Abstract

- Motion by counsel for disclosure of documents for purposes of preparing case
- Refusal to disclose documents on the basis of s. 23 exemption (solicitor-client privilege)

Issue

How much information can be disclosed to counsel for purposes of preparing his case when the refusal to disclose documents is based on s. 23 (solicitor-client privilege)?

Facts

This was a motion by counsel for the applicant for access to certain documents that the respondent refused to disclose on the ground of solicitor-client privilege. Counsel sought disclosure for the purposes of arguing that the documents are not privileged.

Decision

The motion was allowed and the respondent was required to provide more detailed information concerning the documents for which non-disclosure on the basis of solicitor-client privilege was asserted.

Reasons

The Court referred to Decary J.'s statement in *Hunter v. Canada (Minister of Consumer and Corporate Affairs)*, [1991 3 F.C. 186 (C.A.)] to the effect that a "minimum standard of disclosure ought to be instituted" and that such a standard will vary according to the facts of each case. The respondent was required to prepare a list of the documents which are alleged to be protected by the solicitor-client privilege. This list must include the addressee of the documents, the addressor, the date, the title and a brief description of the reasons the solicitor-client privilege is being claimed.

**DO-KY v. MINISTER OF FOREIGN AFFAIRS AND
INTERNATIONAL TRADE
INDEXED AS: DO-KY v. CANADA (MINISTER OF FOREIGN
AFFAIRS AND INTERNATIONAL TRADE)**

File No.: A-200-97

References: [1999] F.C.J. No. 673 (QL) (F.C.A.)

Date of Decision: May 6, 1999

Before: Strayer, Robertson and Sexton
J.J.A. (F.C.A.)

Section(s) of *ATIA / PA*: Ss. 13, 15(1)(h) *Access to
Information Act (ATIA)*

Abstract

- Diplomatic notes
- Assessing probable harm under s. 15

Issues

- (1) Did the Trial Judge err in concluding that the diplomatic notes were properly exempted from disclosure pursuant to para. 15(1)(h)?
- (2) Should the diplomatic notes be dealt with independently of one another or should they be considered as composing a single dialogue?

Facts

The applicant applied for the release of two notes and any diplomatic notes relating to a case summary appended to the request (a total of four notes were examined pursuant to this access request). The applicant was notified that the notes requested were exempt from release under para. 15(1)(h) of the *ATIA* as the release of the documents might reasonably be expected to be injurious to Canada's international relations.

The applicant complained to the Information Commissioner. The foreign country notified the Government of Canada that it objected to the release of the notes as the issue discussed therein continued to be a sensitive topic in that state. The foreign state explicitly requested that the notes remain on confidence. The decision by the Department of Foreign Affairs to consider the request to keep the notes confidential and therefore to exempt from disclosure the notes pursuant to para. 15(1)(h) was supported by the Information Commissioner. The requester applied for judicial review under s. 41 *ATIA*. The Trial Division found that the notes had been properly exempted from disclosure pursuant to para. 15(1)(h). This is an appeal from that decision.

Decision

The appeal was dismissed.

Reasons

Issue 1

The Court was satisfied that the Trial Judge had sufficient evidence before him to reasonably conclude that the diplomatic notes contained specific information the disclosure of which could reasonably be expected to be injurious to the conduct of international affairs. The Court reiterated that there is no “class exemption” for diplomatic notes. Under subs. 15(1), there is no presumption that such notes contain information the disclosure of which will result in a reasonable expectation of injury to the conduct of international relations; there must be evidence of this.

Issue 2

The four diplomatic notes contained a dialogue relating to a specific subject matter. In these circumstances, there should not be any severance: see *Canada Packers Inc. v. Canada (Minister of Agriculture)*, [1989] 1 F.C. 47 (C.A.) which stands for the proposition that each report is to be viewed “in the context of other reports ... as the total contents of a release are bound to have considerable bearing on the reasonable consequences of its disclosure” (p. 64). It was proper to deal with them as one package.

**CANADIAN COUNCIL OF CHRISTIAN CHARITIES V.
MINISTER OF FINANCE
INDEXED AS: CANADIAN COUNCIL OF CHRISTIAN CHARITIES
V. CANADA (MINISTER OF FINANCE)**

File No. : T-2144-97

References: [1999] F.C.J. No. 771 (QL)
(F.C.T.D.)

Date of Decision : May 19, 1999

Before : Evans J. (F.C.T.D.)

Section(s) of *ATIA / PA* : Ss. 18(d), 21(1)(a), (b), 23, 24(1),
41 *Access to Information Act*
(*ATIA*)

Abstract

- Request for documents relating to interpretation of “religious order” in the *Income Tax Act*
- Issue relating to application of *ATIA* ss. 18(d) (injury to financial interests of Government of Canada), 21(1)(a) and (b) (advice, recommendations, accounts of consultations or deliberations), 23 (solicitor-client privilege) and 24 (statutory prohibitions to disclose)
- No injury nor undue benefit under s. 18(d) where claims for deduction legitimate
- S. 21(1)(a) and (b) covering wide range of documents except clearly factual information
- Interpretation of s. 24 *ATIA* and s. 241(10) *Income Tax Act* and importance of maintaining confidentiality of taxpayer information

Issues

- (1) What is the standard of review applicable to the Minister's decision to refuse to disclose the information?
- (2) What is the nature of the decision to be made by the Court when mandatory and discretionary exemptions are at issue?
- (3) Could the documents be exempt from disclosure on the basis of para. 18(d)?
- (4) Could the documents be exempt from disclosure on the basis of paras. 21(1)(a) and (b)?
- (5) Whether the information failed to reveal either directly or indirectly the identity of the taxpayer to whom it relates with the result that s. 241 of the ITA and subs. 24(1) *ATIA* would not apply?
- (6) Was the exemption under s. 23 properly relied upon?

Facts

The Canadian Council of Christian Charities made a request for the disclosure of all materials in the possession of the Department of Finance relating to the interpretation of "religious order", one of the terms defining the scope of the entitlement to the clergy residence deduction set out in para. 8(1)(c) of the *Income Tax Act* (hereinafter the "ITA"). The Minister disclosed some of the documents requested but exempted others on the basis of subpara. 18(d), paras. 21(1)(a) and (b), s. 23 and subs. 24(1) of the *ATIA*.

The Information Commissioner agreed with the Minister that para. 18(d) was applicable. The Minister argued that the disclosure of the documents at issue, which contained legal and policy analyses, would result in an increase in the number of legitimate claims under para. 8(1)(c) of the ITA and that the amount of revenue lost as a result of such claims would increase further to up to \$20 million a year.

With respect to paras. 21(1)(a) and (b), the Information Commissioner was of the view that some of the information contained “advice developed by departmental officials for decision-making purposes” while other information contained “accounts of consultations and deliberations among government officials in FIN and Revenue Canada about the 8(1)(c) provisions of the *Income Tax Act*”. The applicant argued that subs. 21(1) did not exempt from disclosure internal documents that revealed that officials had identified a problem with the ITA deduction. The respondent took the view that it was generally impossible to disentangle the identification of a problem with the legislation from recommendations for reform and advice on policy options for dealing with it. Even when not stated expressly, advice and recommendations might be implicit in the mere identification of a problem. Moreover, an internal document written by one official, and communicated to another, that identifies a problem with the legislation might fall within para. 21(1)(b).

The Minister also based his refusal on the statutory prohibition exemption in subs. 24(1) *ATIA* and on s. 241 of the ITA. Section 241 ITA prohibits any official from knowingly providing to any person “taxpayer information”. The definition of “taxpayer information” under subs. 241(10) excludes

information that “does not directly or indirectly reveal the identity of the taxpayer to whom it relates”. It was the Minister’s contention that disclosure might indirectly reveal the identity of the taxpayers who claimed the deduction.

The solicitor-client privilege exemption of s. 23 was also relied upon by the Minister.

Decision

The application for judicial review was allowed and the information exempt from disclosure with the exception of the information which was factual in nature.

Reasons

Issue 1

Since the Information Commissioner’s recommendations are not legally binding, the decision to be reviewed by the Court is that of the Minister, not of the Commissioner. However, while the Court is required to review the Minister’s decisions on a standard of correctness, it is nevertheless appropriate for it to have regard to the report and recommendations of the Information Commissioner.

Issue 2

In the case of mandatory exemptions, such as s. 24, the Court is called upon to decide only if the information falls within the scope of the exemption. If it does, the information must not be disclosed; if it does not, then the Court will order its disclosure.

In the case of permissive or discretionary exemptions, such as para. 18(d), subs. 21(1) and s. 23, it must decide not only whether the information falls within the scope of the exemption, but also, if it does, whether the Minister lawfully exercised his discretion not to disclose it. In this latter case, the Court must not decide how it would have exercised the discretion but merely review on administrative law grounds the legality of the exercise of that discretion in light of the overall purpose of the statute and of the particular exemption. Where the discretion has been exercised unlawfully, the normal remedy will be to remit the matter to the head of the institution for a redetermination in accordance with the Court's reasons.

Issue 3

Paragraph 18(d) was relied upon in combination with subs. 21(1). The Court found that since non-disclosure of the documents was justified under subs. 21(1), it was not necessary to decide whether the claim under para. 18(d) had also been properly made. The Court nonetheless set out, *in obiter*, its response to the para. 18(d) argument made by the respondent.

It was the Court's view that the words "injurious to the financial interests of the Government of Canada" in para. 18(d) cannot be interpreted to include revenue loss resulting from an increase in the legitimate claims to a deduction under the ITA. Similarly, if disclosure encourages taxpayers to claim the benefit of a deduction to which they are entitled, then the resulting benefits cannot be "undue" within the meaning of para. 18(d). However, disclosure of documents that contain analyses by officials of various options for amending the

statute may be refused on the ground that the information in those documents relate to “a contemplated change in ... taxes” under subpara. 18(d)(iii) if disclosure would cause a loss of revenue to the government or would unduly benefit particular individuals. With respect to the para. 18(d) exemption, the Court will require clear proof that the Minister has reasonable grounds to believe that there is a reasonable expectation of probable harm of the prescribed kinds if disclosure occurs.

Issue 4

The Court found it difficult to avoid the conclusion that the combined effect of paras. 21(1)(a) and (b) is to exempt from disclosure a very wide range of documents generated in the internal policy processes of a government institution. Documents containing information of a factual or statistical nature, or providing an explanation of the background to a current policy or legislative provision, may not fall within these broad terms. However, most internal documents that analyse a problem, starting with an initial identification of a problem, then canvassing a range of solutions, and ending with specific recommendations for changes, are likely to be caught within paras. 21(1)(a) or (b). The Act thus leaves to the head of a government institution, subject to review and recommendations by the Information Commissioner, the discretion to decide which of the broad range of documents that fall within these paragraphs can be disclosed without damage to the effectiveness of government. There is very little role for the Court in overseeing the exercise of this discretion.

On examining the material before it, the Court was satisfied that, with three exceptions, the material withheld fell within paras. 21(1)(a) and (b). The exceptions dealt with information clearly factual in nature such as the description of a well known social change that has occurred in Canada; the description of the results of certain tax appeals, including a statement as to the intent of Parliament in enacting para. 8(1)(c); and the description of the Council's role and the strategy it has pursued on the para. 8(1)(c) issue.

Issue 5

It was clear for the Court that disclosing the name of the employer of a person who claimed the deduction could reveal the identity of the taxpayer concerned. Whether this is in fact the case will turn on the particular circumstances, including the size of the organization, the number of its employees and the extent to which it is locally based. On the facts before it, the Court was satisfied that disclosure would reveal, either directly or indirectly, the identities of the taxpayer claimants. The Court reiterated the importance of maintaining the strict confidentiality of taxpayer information as a matter of fairness to the individuals as well as of efficient administration of the ITA.

Issue 6

The document exempt from disclosure was a legal opinion provided, on request, by the Department of Justice and hence, was properly within the s. 23 exemption. Even though the opinion was given 15 years ago, it dealt with issues that are of continuing vitality. Therefore, there was no obvious error in the decision not to disclose it.

**IN THE MATTER OF THE *Unemployment Insurance Act*
AND IN THE MATTER OF A CLAIM FOR BENEFITS BY **DEBORAH
SMITH** AND IN THE MATTER OF AN APPEAL TO AN **UMPIRE** BY
THE CLAIMANT FROM THE DECISION OF THE **BOARD OF
REFEREES DATED OCTOBER 7, 1997****

File No: 295103-0-286

References: CUB 44824

Date of Decision: May 27, 1999

Before: Rothstein J. (Umpire)

Section(s) of *ATIA / PA*: Ss. 5, 8(2)(b) *Privacy Act (PA)*

Other statutes: Ss. 6(1), 8 *Canadian Charter of
Rights and Freedoms*; s. 108(1)(b)
Customs Act

Abstract

- Disclosure of personal information by Revenue Canada – Customs and Excise to Canada Employment and Immigration Commission
- Purpose: to identify claimants in receipt of employment insurance benefits during unreported absences from Canada
- Search or seizure under s. 8 *Charter*
- Notification requirement under s. 5(2) *Privacy Act*
- Validity of disclosure under s. 8(2)(b) *Privacy Act* and s. 108(1)(b) *Customs Act*

- Exercise of ministerial discretion under s. 108(1)(b) *Customs Act*
- Mobility rights under s. 6(1) *Charter*

Issues

Does the provision of information by Revenue Canada, Customs and Excise (“Customs”) to the Canada Employment and Immigration Commission (the “Commission”) contravene the appellant’s right to be free from unreasonable search or seizure under s. 8 of the *Charter*?

Does para. 32(b) of the *Unemployment Insurance Act* contravene the appellant’s mobility rights under subs. 6(1) of the *Charter*?

Facts

The appellant left Canada on January 30, 1995. She returned on February 16, 1995. On her return to Canada by air, she completed an E-311 Customs Declaration Form. In accordance with an agreement between Customs and the Commission, information from the appellant’s E-311 form was provided to the Commission. That information included her name, date of birth, postal code, dates of departure from and return to Canada and whether she was travelling for business or personal reasons. It was released by Customs to the Commission pursuant to para. 108(1)(b) of the *Customs Act* which allowed for the disclosure of information collected by Customs to persons authorised by the Minister of National Revenue, subject to such conditions as the Minister may specify.

The Commission used the information to match the appellant's E-311 information to its list of unemployment insurance beneficiaries and discovered that the appellant had received benefits while being absent from Canada contrary to para. 32(b) of the *Unemployment Insurance Act*. As a result, the appellant was ordered by the Commission to repay those benefits received while absent from Canada and issued a penalty for knowingly making false or misleading statements in not informing the Commission of her absence from Canada contrary to subs. 40(1) of the *Unemployment Insurance Act*.

The Board of Referees agreed with the Commission that the appellant was obliged to repay the benefits but reversed the Commission's imposition of a penalty based on a finding that she did not knowingly make false or misleading statements. However, the *Charter* issue was not addressed by the Board. The appellant appealed to the Umpire on the basis that the provision of information from Customs to the Commission violated her s. 8 *Charter* right to be free from unreasonable search and seizure and on the basis that para. 32(b) of the *Unemployment Insurance Act* which disallows her from receiving benefits while absent from Canada, contravenes her subs. 6(1) *Charter* right to enter, remain in and leave Canada.

Decision

The appeal from the Board of Referees was dismissed; s. 8 and subs. 6(1) of the *Charter* were not infringed.

Reasons

Issue 1

Before directly addressing the s. 8 issue, the Umpire recognised that the interests of all returning Canadian residents, in the same circumstances as the appellant, whose information was being disclosed by Customs to the Commission must be considered in this case. The Umpire found that regardless of any obligation on the appellant to disclose her absence from Canada to the Commission, E-311 information of other returning Canadian residents, in the same circumstances as the appellant, was being disclosed and therefore their interests must also be considered in this decision.

Based on the Supreme Court of Canada's decision in *Hunter v. Southam*, [1984] 2 S.C.R. 145, the Umpire recognised that the underlying question to be asked under s. 8 was whether the appellant had a reasonable expectation of privacy in her E-311 information which outweighed the government's goal of enforcing the *Unemployment Insurance Act*. It should be noted that the Umpire found no difference conceptually between accessing computer information through a computer password versus providing information on a computer tape. Accordingly he followed the analysis in *R. v. Plant*, [1993] 3 S.C.R. 281 and considered the nature of the information transferred, whether the relationship between Customs and returning Canadian residents by air could be characterised as confidential, the place and manner in which the information was obtained by the Commission, and the seriousness of the crime being investigated by the Commission.

The Umpire concluded first, that the appellant's name, date of birth, postal code, dates of departure from and return to Canada and whether she was travelling for business or personal reasons was not information of a personal and confidential nature such that it warranted *Charter* protection because it did not reveal "intimate details of the lifestyle and personal choices of individuals" as required by the Supreme Court in *Plant*.

Second, the Umpire found that while s. 107 of the *Customs Act* created a relationship of confidence between returning Canadian residents and Customs because it prohibited the disclosure of Customs information to third parties, this section was subject to s. 108 of the *Customs Act*. Paragraph 108(1)(b) explicitly authorises the disclosure of information in limited circumstances. In the context of disclosure of information under the *Customs Act*, the Umpire found that there was no requirement that criteria, standards or circumstances be specified in para. 108(1)(b) as required under laws providing for intrusive searches. Accordingly, he found that para. 108(1)(b) was not contrary to s. 8 of the *Charter*. That being said, the para. 108(1)(b) discretion must be exercised in good faith, in accordance with the principles of natural justice and in reliance on considerations relevant to the purposes of the *Customs Act*. The Umpire found, on the basis of the Ancillary Memorandum of Understanding of April 15, 1997 before him, that the Deputy Minister, National Revenue, had properly exercised his discretion under para. 108(1)(b). The conditions set forth in the AMOU were consistent with the purposes of ss. 107 and 108 of the *Customs Act* "to preserve the confidentiality of information" and "to disclose it only in limited circumstances".

Furthermore, the Umpire held that judicial authorisation was not necessary, in these circumstances, for the disclosure of information. He stated, “Judicial authorization is appropriate in the context of specific circumstances where it is thought necessary to compel a person to provide information. However, in this case, Customs agreed to disclose information to the Commission and paragraph 108(1)(b) is a statutory provision that effectively authorizes disclosure. *In these circumstances, judicial authorization is unnecessary.*” [Emphasis added.]

Finally, with respect to the argument that para. 8(2)(b) of the *Privacy Act* does not contemplate disclosure under para. 108(1)(b) of the *Customs Act* as the latter provision merely delegates the power to disclose, the Umpire held that para. 8(2)(b) of the *Privacy Act* does not spell out the mechanism by which another Act of Parliament may authorise disclosure. In delegating the disclosure decision-making power to the Minister, para. 108(1)(b) provides a mechanism which, when properly carried out, authorises disclosure.

Third, the Umpire found that in obtaining the E-311 information, the Commission did not intrude into places ordinarily considered private because the information was simply transferred from one government database to another. Further, the manner in which the disclosure was made to the Commission was in good faith and in keeping with what could be reasonably expected by all returning Canadian residents by air. Specifically, the Umpire found that neither subs. 5(2) nor para. 8(2)(b) of the *Privacy Act* required Customs to notify those Canadians returning by air on February 16, 1995 of the

disclosure of their E-311 information to the Commission. In making this determination, he stated, “The Commission, as recipient of the information in accordance with paragraph 8(2)(b) of the *Privacy Act* was not the collector of the information and therefore section 5 [of the *Privacy Act*] [was] not applicable to the Commission. However, Customs did collect the information and therefore, section 5 applies to Customs.” The Umpire held that since Customs was not collecting the information on February 16, 1995 for the purposes of disclosing it to the Commission, it was not required to provide notification. The argument that there can be no disclosure of information under subs. 8(2) prior to notice first being given, was dismissed. The Umpire found that subs. 5(2) cannot be interpreted as a general requirement that notification be given before information is disclosed under subs. 8(2) for the following reasons: the subs. 5(2) notification requirement arises from subs. 5(2), not from subs. 8(2); it hinges on the purpose of the collection not on its disclosure; in addition, subs. 8(2) is not stated to be subject to subs. 5(2). However, he added, *in obiter*, that “...if disclosure to another government department became one of the purposes for which the information was being collected, such notification would likely be required. However, until that time, there is no notification requirement.”

Next, the Umpire found that because the *Unemployment Insurance Act* was based on a principle of self-reporting where some individuals will attempt to take advantage of the system in order to obtain benefits to which they are not legally entitled, it was reasonable that, where the matching of information was the most effective way to detect

unemployment insurance claimants who had left Canada, the disclosure of E-311 information would be necessary.

Finally, the Umpire found that the detection of unemployment insurance claimants who were absent from Canada contrary to para. 32(b) of the *Unemployment Insurance Act* was taken seriously by the government. Proof of this was found in the provisions of the Act itself which made a claimant's failure to disclose absence from Canada an offence punishable on summary conviction as well as an offence subject to monetary penalties up to three times a claimant's weekly benefits. The Umpire further acknowledged that the protection of contributors' resources under the *Unemployment Insurance Act* was serious especially in light of the fact that it is based on a system of self-reporting.

Issue 2

Following *Bregman et al. v. Attorney-General of Canada* (1986), 55 O.R. (2d) 596 (S.C.), aff'd at 33 D.L.R. (4th) 477 (Ont. C.A.), the Umpire found that while leaving Canada had the effect of disentitling the appellant from receiving benefits subject to certain exceptions, the right to leave Canada was unimpaired. The appellant was free to enter, remain in, and leave Canada at her discretion. He made a conclusive finding that subs. 6(1) of the *Charter* does not protect the appellant from the economic disadvantages associated with leaving the country.

Comments

The claimant applied for judicial review of the Umpire's decision. The application was dismissed by the Federal Court of Appeal (*Smith v. Canada (Attorney General)*, [2000] F.C.J. No. 174 (QL) (F.C.A.), A-401-99, order dated February 9, 2000). The Court was in substantial agreement with the Umpire's reasons and did not add anything more with respect to s. 8 of the *Charter*. Application for leave to appeal to the Supreme Court of Canada has been granted (August 17, 2000).

PEET V. MINISTER OF NATURAL RESOURCES CANADA
INDEXED AS: PEET V. CANADA
(MINISTER OF NATURAL RESOURCES)

File No.: T-827-99

References: [1999] F.C.J. No. 886 (QL)
(F.C.T.D.)

Date of Decision: June 4, 1999

Before: Reed J. (F.C.T.D.)

Section(s) of ATIA / PA: S. 23 Access to Information Act
(ATIA)

Abstract

- Motion to obtain information for purposes of preparing case
- Refusal to disclose documents on the ground of s. 23 exemption (solicitor-client privilege)
- Distinction made from cases where counsel seeks disclosure for purposes of preparing case

Issue

Can the requester, in order to properly prepare his case, be provided with information relating to documents that the respondent refused to disclose on the ground of solicitor-client privilege?

Facts

A request for information was made under subs. 12(1) of the *Privacy Act* but the respondent refused to disclose certain documents on the ground that they were subject to solicitor-client privilege. This was a motion by the applicant to obtain further information relating to those documents in order to properly prepare his case. The applicant argues that this is similar to the situation where information is required with respect to documents for which privilege is claimed in an affidavit of documents prepared for the purposes of an action.

Decision

The motion was dismissed.

Reasons

The applicant relied on caselaw that relates to claims for privilege set out in affidavits of documents filed for the purposes of an action (see Federal Court Rule 223). The requirement for particularity in such an affidavit is designed to establish that a *prima facie* claim for privilege exists. However, in the case at bar, the privileged nature of the documents has already been challenged by an application for judicial review. Therefore, there is no need to demonstrate that a *prima facie* claim for privilege exists. The privilege has been asserted and the assertion has been challenged. Incorporating requirements that pertain to affidavits of documents filed pursuant to Rule 223 into the application for judicial review that is used to challenge the non-disclosure of information under either the *Access to Information Act* or the *Privacy Act* would add an

unnecessary step to that procedure. The Court distinguished this case – where the applicant is acting on his own behalf – from those where disclosure may be granted to applicant’s counsel on the undertaking of confidentiality. The Court found, on the basis of the record before it, that the additional information sought by the requester was not necessary to enable him to pursue his application.

**MATOL BOTANICAL INTERNATIONAL LTD. v.
MINISTER OF HEALTH AND WELFARE
INDEXED AS: MATOL BOTANICAL INTERNATIONAL LTD. v.
CANADA (MINISTER OF HEALTH AND WELFARE)**

File No.: T-1438-93

References: [1999] F.C.J. No. 1273 (QL)
(F.C.T.D.)

Date of Decision : August 18, 1999

Before: Tremblay-Lamer J. (F.C.T.D.)

Section(s) of ATIA / PA: S. 20(1)(b) and (c) *Access to
Information Act (ATIA)*

Abstract

- “*Res judicata*”: Same parties and purpose, final decision
- S. 20(1)(c) ATIA : Reasonable expectation of material financial loss or gain; prejudice to competitive position

Issues

- (1) In file T-1438-93, was there “*res judicata*” with respect to the decision of Mr. Justice Noël in *Matol Botanical International Ltd. v. Canada (Minister of Health and Welfare)* (1994), 84 F.T.R. 168 (F.C.T.D.)?
- (2) In file T-2454-93, did Matol Botanical discharge the burden of proving that the disclosure of the documents at issue could reasonably be expected to result in material financial loss or gain, or could reasonably be expected to prejudice its competitive position under para. 20(1)(c)?

Facts

Pursuant to s. 44 of the *ATIA*, the applicant was seeking the review and quashing of two decisions by the Minister of Health and Welfare Canada authorizing the disclosure of information in response to an application for access to information regarding the applicant's products.

First decision (file T-1438-93): the Minister informed Matol of an application for access concerning a "copy of all information on Matol Botanical International Ltd. (and their products) that the Health Protection Branch of Health and Welfare Canada ha[d] on file". The applicant was also informed that the Minister intended to proceed to disclose 36 of the 39 documents involved. Matol objected to the application. The Minister dismissed its objection and authorized that the information be disclosed.

Second decision (file T-2454-93): The facts are almost the same as in file T-1438-93, except that at the hearing, Matol limited its argument to the application of the exemption mentioned in para. 20(1)(c) of the Act. The applicant alleged primarily that the disclosure would significantly worsen its precarious financial situation caused by its being put in receivership. It submitted that as customer demand in the field of natural products was so uncertain, any negative information would cause a massive abandonment of its products by its customers and that as it was in a precarious financial position, it would not have the necessary funds to mount an advertising program to offset the negative image created by such a disclosure.

On June 3, 1994, in connection with another application for access to information, Noël J. upheld the Minister's decision to permit disclosure of all but three of these documents: see *Matol Botanical International Ltd. v. Canada (Minister of Health and Welfare)* (1994), 84 F.T.R. 168 (F.C.T.D.) (T-1261-92).

Decisions

The application in file T-1438-93 was dismissed at the hearing on the ground that it was “*res judicata*” (see the decision of Noël J. in *Matol Botanical International Ltd. v. Canada (Minister of Health and Welfare)* (1994), 84 F.T.R. 168 (F.C.T.D.)).

The motion in file T-2454-93 was dismissed, except for documents 1-2 which, as in file T-1261-92, related to distributors. The Judge was of the view that Matol had not discharged the burden of proving that the disclosure of the documents at issue could reasonably be expected to result in material financial loss or gain, or prejudice its competitive position within the meaning of para. 20(1)(c).

Reasons

Issue 1 (file T-1438-93)

Since the parties were the same, the purpose was the same and the decision was final, the three tests for “*res judicata*” were met. The only distinction lay in the fact that the applicant Matol was now in receivership under the *Companies' Creditors Arrangement Act*. This event did not alter the subject-matter of the case, which was the same in both files, namely determining whether the documents were public or

confidential. Further, these documents were available to the public in file T-1261-92. The Judge cited the comments of Mr. Justice MacKay in *Air Atonabee Limited v. Canada (Minister of Transport)* (1989), 27 F.T.R. 194 (F.C.T.D.), who noted that information could not be confidential, even if third parties regarded it as such, when it was available to the public from some other source.

Issue 2 (file T-2454-93)

Madame Justice Tremblay-Lamer relied on the following grounds to dismiss the review application:

(1) In *SNC-Lavalin Inc. v. Canada (Minister of Public Works)*, MacKay J. dismissed the applicant's arguments because they were based entirely on unsupported assumptions in an affidavit. He stated:

The applicant does not demonstrate probable harm as a reasonable expectation from disclosure of the Record and the Proposal simply by affirming by affidavit that disclosure "would undoubtedly result in material financial loss and prejudice" to the applicant or would "undoubtedly interfere with contractual and other negotiations of SNC-Lavalin in future business dealings". These affirmations are the very findings the Court must make if paragraphs 20(1)(c) and (d) are to apply. Without further explanation based on evidence that establishes those outcomes are reasonably probable, the Court is left to speculate and has no basis to find the harm necessary to support application of these provisions.

In light of *SNC-Lavalin Inc.*, Tremblay-Lamer J. was unable to conclude that the applicant Matol demonstrated a reasonably probable outcome, as there was no other evidence in the record to support the financial position suggested.

(2) Assuming that the information covered by the application was used, Tremblay-Lamer J. was of the view that the age of the documents and their content were not so negative as to create a reasonable probability of material financial loss. The documents relating to the complaints indicated that the latter were without foundation and the documents relating to the inspection reports showed that the applicant had taken corrective action.

In *Canada Packers Inc. v. Canada (Minister of Agriculture)*, [1989] 1 F.C. 47 (C.A.), Mr. Justice MacGuigan held that the reports were not so negative as to be exempt from disclosure. The applicant in *Matol* provided no evidence of a single recall of products following the decision by Noël J. in 1994 allowing the disclosure of similar prior documents. Also, since those similar documents were available to the public (see the decision of Noël J. in file T-1261-92), it was difficult to see how the disclosure could produce the negative consequences mentioned by the applicant.

**DEKALB CANADA INC. V. AGRICULTURE
AND AGRI-FOOD CANADA
INDEXED AS: DEKALB CANADA INC. V. CANADA
(AGRICULTURE AND AGRI-FOOD)**

File No.: T-1998-97

References: [1999] F.C.J. No. 1960 (QL)
(F.C.T.D.)

Date of Decision: September 15, 1999

Before: Dubé J. (F.C.T.D.)

Section(s) of *ATIA* / *PA*: Ss. 20(1)(c), 20(2) *Access to
Information Act (ATIA)*

Abstract

- S. 44 review
- Tests results information collected by government institution
- S. 20(1)(c) criteria of reasonable expectation of material financial loss not met
- Information falling within s. 20(2) exception to s. 20(1) exemption

Issues

(1) Has Dekalb proven, on a balance of probabilities, that the release of the requested information met the criteria of the “reasonable expectation of material financial loss” test in para. 20(1)(c) *ATIA*?

- (2) Did the document contain “results of product or environmental testing carried out on behalf of a government institution” so as to fall within the subs. 20(2) exception to the non-disclosure provisions set out in subs. 20(1) *ATIA*?

Facts

This is a s. 44 application by Dekalb Canada Inc. to review the decision made by the respondent to release documents containing the tests results for Dekalb hybrid corn samples taken in 1995 and tested in 1996. The requester is a party to one of seven lawsuits instituted against Dekalb by farmers alleging to have used the variety DK 220 and claiming damages against Dekalb. The document in question deals with 13 different seed varieties including DK 220. There were 300 plants tested for each variety. The percentage of off-types found in each sample is provided.

Dekalb claims that the release of the information would prejudice it in the lawsuits as the seven plaintiffs would use that information in their claim for damages. Dekalb also claims that the information requested is inaccurate and erroneous regarding the tests results. It argued that the document in question was not really a document which “contains results of product or environmental testing carried out by or on behalf of a government institution”, under subs. 20(2), but constituted mainly in a visual inspection: the inspector merely visualized a number of samples and found a certain percentage thereof to be off-types. They say there was no chemical, technical or any laboratory analysis carried out on the samples.

Subsection 20(2) provides that the head of a government institution shall not, pursuant to subs. 20(1), refuse to disclose a part of a record if that part contains the results of product or environmental testing carried out by or on behalf of a government institution, unless the testing was done as a service to a person other than a government institution and for a fee.

Decision

The application for judicial review was dismissed.

Reasons

Issue 1

Dekalb could not benefit from the subs. 20(1) exemption. The document in question does not reveal “trade secrets”; it does not reveal information emanating from Dekalb’s research and development efforts. It merely provides the end results of a government inspection and was done as part of an inspection program. That information is available to the public upon request. The fact that the party who makes the request in this instance happens to be the plaintiff in an action against Dekalb, and may use that information at trial, does not vest the document with the characteristics of confidentiality. Information is not confidential where it may be obtained by observation, albeit with more effort by the requestor (see *Air Atonabee Ltd. v. Canada (Minister of Transport)* (1989), 27 F.T.R. 194 (F.C.T.D.), at p. 208).

Dekalb's allegation that the information regarding the tests results is inaccurate and erroneous is irrelevant. Judicial review under the *ATIA* is not the proper forum to test the accuracy of tests results in a particular document, or to challenge the validity of records under the control of a government institution.

The document was created by the public authorities spending funds in order to protect the public (see *Intercontinental Packers Limited v. Canada (Minister of Agriculture)* (1987), 14 F.T.R. 142 (F.C.T.D.), at p. 147). The document was not supplied by Dekalb in confidence and with the expectation that it would never be revealed to the public. It was created by the respondent Department. These inspection reports are "judgments made by government inspectors on what they have themselves observed" (see *Canada Packers Inc. v. Canada*, [1989] 1 F.C. 47 (C.A.), at p. 54).

Issue 2

The document contained test results following the testing of samples of hybrid corn seeds taken by the respondent from Dekalb's premises. It clearly contained the results of "product or environmental testing carried out by or on behalf of a government institution" and was not done as a service to a person for a fee. Therefore, Dekalb cannot benefit from the subs. 20(1) exemption as it fell under the subs. 20(2) exception to the exemption.

Comments

This decision is on appeal.

CLEARWATER V. THE MINISTER OF CANADIAN HERITAGE
INDEXED AS: CLEARWATER V. CANADA
(MINISTER OF CANADIAN HERITAGE)

File No.:	T-1-99
References:	Not yet reported
Date of Decision:	September 21, 1999
Before:	Cullen J. (F.C.T.D.)
Section(s) of <i>ATIA / PA</i> :	Ss. 7, 11, 41, 48, 53(2) <i>Access to Information Act (ATIA)</i>

Abstract

- S. 41 *ATIA* review
- Fees
- Statutory delay calculation
- Deemed refusal
- S. 41 limitation period
- Criteria for exercise of Court's discretion
- Charge for "cut and paste" activities
- Reverse onus under s. 48 *ATIA*
- S. 53(2) cost assessment

Issues

- (1) Whether a complaint concerning fees charged under the *ATIA* can be properly brought before the Federal Court?

- (2) Whether this application as regards the 1997 charges in particular is properly before the Federal Court?
- (3) Whether the 1998 charges were properly assessed?
- (4) Whether s. 48 *ATIA* reverses the onus of providing the legitimacy of the fees onto the shoulders of the respondent?
- (5) Should costs be assessed?

Facts

This is a s. 41 *ATIA* application for an order directing the Minister of Canadian Heritage to withdraw certain fees charged pursuant to this Act for documents the applicant requested from the National Archives of Canada (NAC) in 1997 and 1998. On receiving each of the applicant's requests, the NAC wrote to the applicant advising that there would be a fee of \$350 for his 1997 request (there were over 2,000 pages and about 35 hours of "preparation time" to process it). The amount charged for the 1998 request was \$248.40 and included \$70 for the "search/preparation" of almost 900 pages of material.

The requester complained and the Information Commissioner found against the requester in both cases. The applicant filed his Notice of Application with the Court 42 days after the Commissioner's findings concerning the 1998 charges and approximately 425 days after the Commissioner's 1997 findings. The applicant was worried that he was charged not for "preparation" activities but for "review" activities.

The respondent's witness swore in her affidavit that "...the activities which I considered to be chargeable were those that related directly to the time spent rendering documents available for disclosure which I refer to as the 'physical' or 'material' preparation of the severed information. In this case, the 'preparation' activity is solely 'cut and paste' operations."

Decision

The application for judicial review was dismissed in its entirety.

Reasons

Issue 1

The first issue before the Court is whether the wording of s. 41 *ATIA* allows for an appeal of a complaint regarding fees. On its face, s. 41 allows for appeals from the Commissioner only with regards to a refusal of access to a record requested under the *ATIA*. In this case, however, as noted by the Court, the applicant is appealing the levying of a fee, not a refusal of access.

The applicant requested from the NAC access to certain documents in late August of 1997. Pursuant to s. 7 the NAC had until late in September, assuming no deadline extensions, to give access to the requested documents. Failing this, the NAC would have been deemed by subs. 10(3) to have refused to give access. Because the applicant failed to pay for the assessed levy of \$350, the NAC failed to give access to the documents within this period. The NAC must therefore be deemed to have refused to give access. Having been deemed

to have been refused access, the applicant was right to apply to the Court under s. 41. Reference was made to the decision of this Court in *Rubin v. Canada (Minister of Finance)* (1987), 35 D.L.R. (4th) 517 (F.C.T.D.).

Issue 2

The second issue is whether the applicant's appeal of the 1997 charges has missed the limitation period in s. 41. The Court ruled that pursuant to this section, the clock begins "after the time the results of an investigation of the complaint by the IC are reported to the complainant" and runs for 45 days. The applicant filed his notice with the Court more than a year over the 45-day deadline. The limitation period, the Court said, may continue to run beyond 45 days, however, for "such further time as the Court may, either before or after the expiration of those 45 days, fix or allow."

The Court referred to *Grewal v. M.E.I.*, [1985] 2 F.C. 263 (C.A.) (where the Court dealt with subs. 18.1(2) of the *Federal Court Act* (as am. by S.C. 1990, c. 8, s. 5) and which contains wording similar to that of s. 41 *ATIA*) and the four criteria relevant in determining whether the Court should exercise its discretion under that subsection. The Court ruled in *Clearwater* that:

- (1) there was no evidence by the applicant that he intended to apply to the Court within the limitation period set out in s. 41 *ATIA*;
- (2) the period of extension that would be necessary to accommodate the review of the 1997 charges would be over a year;

- (3) there was no evidence showing that the respondents would be prejudiced by the granting of an extension;
- (4) regarding whether the applicant has an arguable case concerning the amount of the fees, reference was made to:
- a) subs. 11(2) *ATIA* where it is said that the fees are payable “for every hour in excess of five hours that is reasonably required to search for the record or prepare any part of it for disclosure, and may require that the payment be made before access to the record is given”; and to b) Treasury Board’s Implementation Report No. 49 (June 23, 1995) which states that: “Determining what constitutes preparation... appears to be somewhat more problematic. Chargeable preparation activities are those that relate directly to the time spent rendering documents available for disclosure to the applicant. This includes the ‘cut and paste’ operations. Time spent on administrative processes, such as producing copies for review purposes, incorporating comments provided during the decision-making process, document tracking and producing file copies of documents, are not considered part of preparation and are therefore not chargeable. When a document is disclosed in its entirety, both preparation and reproduction activities are reasonably straightforward. Only when the requester has asked for a copy, rather than exercising the right to view the original, would reproduction fees apply. The process becomes more complex when it is determined that the document is likely to contain exemptions. To render the document available for viewing, institutions may have to produce copies so as not to compromise the integrity of the original. While no copying

charges can be applied to copies made for review, the time spent preparing the copies to be viewed by the requester could be considered part of the preparation time.”

The Court ruled that there is very little on which to conclude that the applicant was charged for anything other than “preparation” time. The Court added that: “There must be more evidence before there can be a reasonable chance of the applicant proving that he was assessed for activities that fall outside those envisioned by section 11 and Treasury Board policy”.

Furthermore, as the applicant never intended to apply to the Court within the limitation period set out in s. 41 of the Act and as a year’s extension would be required, it is clear that this is not an occasion for the Court to exercise its discretion, under s. 41, to extend the limitation period.

Issue 3

This issue concerns the 1998 charges levied against the applicant for which he seeks a review. The Court ruled that the applicant was charged for the activities as set out in paragraph 11 of the affidavit and that “cut and paste” activities fall within s. 11 of the Act and the relevant Treasury Board policy as assessable activities.

Issue 4

This issue was about the reverse onus which s. 48 of the Act imposes on the respondent and to which the applicant alludes to in his application. The applicant made no submissions with

regards to this matter and it is not clear that it is relevant to the case at bar. Only by analogizing a “refusal to disclose” with the “levying of fees” could s. 48 be relevant and force the burden of establishing the legitimacy of the fees onto the respondent. There is, however, no authority for making such an analogy, and, in the absence of submissions, the Court made no finding concerning this matter.

The applicant asked the Court for an order requiring the NAC to change its policy regarding future fees assessments. As this type of relief is beyond the purview of the Court’s authority, the Court did not consider this request.

Issue 5

On the issue of assessing costs, the Court examined subs. 53(2) *ATIA* and ruled that the circumstances did not require the assessment of costs because, although the application did broach the issue of whether fee complaints can be accommodated under s. 41 *ATIA*, this issue, as witnessed by *Rubin v. Canada (Minister of Finance)*, is not new to the Court. Neither are the other issues raised.

MICHELLE LEVASSEUR V. MINISTER OF REVENUE CANADA
INDEXED AS: LEVASSEUR V. M.N.R.

File No.: T-495-99

References: [1999] F.C.J. No. 1471 (QL)
(F.C.T.D.)

Date: September 24, 1999

Before: Rouleau J. (F.C.T.D.)

Section(s) of *ATIA / PA*: S. 12 *Privacy Act (PA)*

Abstract

- Request for personal information under s. 12 *PA*
- Refusal to disclose 20 pages well founded
- Motion for particulars about the source of QST selection cards allowed

Issues

- (1) Is the refusal to disclose 20 pages well founded?
- (2) Is the applicant's motion for particulars about the source of documents entitled "QST selection card" legitimate?

Facts

This concerns an application to review and set aside the decision of the Minister of National Revenue to refuse to disclose information following an access request submitted under s. 12 of the *PA*. The request concerned a tax audit of

the annual payment of taxes levied as GST (goods and services tax) and QST (Quebec sales tax), over a period of about three and a half years.

The applicant asked Revenue Canada and Revenu Québec to provide her with a complete copy of the entire file concerning the audit of her convenience store. The Ministers responsible for the two institutions sent all the documents to the applicant except for 20 pages that were deemed “confidential”. Revenu Québec refused the applicant access to the 20 pages on the ground that their disclosure would be detrimental to the conduct of relations between the Government of Quebec and the Government of Canada.

The applicant indicated in her motion that she had several questions about the documents entitled “QST selection card” that were allegedly prepared by Revenu Québec in April 1995, since the audit of the bookkeeping for her convenience store only began in October 1995. She asked for some particulars about the source of these cards.

Decision

The applicant’s motion is dismissed except for the information that the appropriate Department must provide with respect to the applicant’s questions about the QST selection cards.

Reasons

Issue 1

The Court confirmed that the 20 pages that were not disclosed to the applicant did not concern the applicant or her business.

Issue 2

Rouleau J. ruled that the applicant's motion for particulars was legitimate and ordered that the applicant be given explanations regarding the source of the QST selection cards.

**ADGA GROUP CONSULTANTS V. MINISTER OF PUBLIC WORKS
AND GOVERNMENT SERVICES CANADA AND MINISTER OF
CORRECTIONAL SERVICES CANADA
INDEXED AS: ADGA GROUP CONSULTANTS V. CANADA
(MINISTER OF PUBLIC WORKS AND GOVERNMENT SERVICES)**

File No.: T-1945-98

References: Not reported

Date of Decision: October 26, 1999

Before: Pelletier J. (F.C.T.D.)

Section(s) of *ATIA / PA*: S. 20(1)(c) *Access to Information Act (ATIA)*

Abstract

- Initial bid price and total for services under contract requested
- “Reverse engineering” argument made against release
- S. 20(1)(c) *ATIA* reasonable expectation of probable material financial loss criteria not met
- Proof required under s. 20(1)(c)

Issue

Has Adga Group Consultants Inc. proven, on a balance of probabilities, that the release of the requested information meets the criteria of the “reasonable expectation of material financial loss” test in para. 20(1) (c) *ATIA*?

Facts

This was a s. 44 application by Adga Group Consultants Inc to review the Ministers' decision to release information related to this company. Adga is a firm of consulting engineers who responded to a request for Proposals ("RFP") issued on behalf of the Minister of Correctional Services Canada for work to be done in federal penitentiaries. Other firms also submitted proposals. Adga was successful and entered into a contract with the Crown for a price and a time frame which differed from those set out in the original response to RFP. Later, an *ATIA* request was made for a "Copy of Contract between Adga and the Crown along with all associated documentation". The request was dealt with by Public Works and Government Services Canada ("PWGSC") who required Adga to show why the information should not be released. Two items were at issue: (1) the initial bid price proposed by Adga; and (2) the grand total for all services under the contract.

Adga's claim is that it will be disadvantaged in future competitions if the requester, which it assumes is its competitor, is able to discern its bidding procedure from the information sought to be disclosed, and that as a result, it will suffer financial losses. Adga argued that "by giving the Applicant's competitor two bid prices, the Respondent is giving its competitor, who is requesting the information, a means of 'reverse engineering' the Applicant's methodology for bidding on the respondent's contracts, thus resulting in a material loss to the Applicant, a material gain to the competitor requesting the information, and to the prejudice of the Applicant's competitive position when trying to bid for the Respondent's contracts".

Agda's affidavit did not provide any indication of the scope of the losses which it predicts in the event of disclosure of the bid information.

Adga relies upon *Prud'homme v. Canada (Canadian International Development Agency)* (1994), 59 C.P.R. (3rd) 26 (F.C.T.D.) in which Pinard J. held that "the rates contained in the financial clauses...and the list of staff...are information which represents the specific expertise acquired by Agric Air Inc. as the result of very significant investments of time and money in a very specialized field". "Disclosure", said the Judge, "would amount to giving Agric Air Inc.'s main competitor the results of the exceptional know-how possessed by the latter business in the field of aerial spraying and the related consultation." As a result, "the very nature of the information sought, its potential use and the confidentiality with which it has been consistently treated, therefore, I consider that in the circumstances its disclosure to the applicant involve a 'reasonable expectation of probable harm' for Agric Air Inc."

Decision

The application was dismissed.

Reasons

The prejudice or harm referred to in paras. 20(1)(c) and (d) must be a "reasonable expectation of probable harm". Speculation or mere possibility of harm is not enough. There was no basis, in the case at bar, upon which to conclude that

Adga's loss would be a material loss. Nothing in Adga's affidavit went beyond an assertion that Adga would suffer a loss if disclosure is allowed.

With respect to the *Prud'homme* case, Pelletier J. ruled that it was distinguishable from the present case in that it involved disclosure of specific financial clauses and the names of Agric's field staff. In this case, that information has already been exempted from disclosure. The level of detail in issue is significantly different. Furthermore, the substance of Adga's complaint is its claim that the requester will "reverse engineer" the data to discover its bidding methodology. Without knowing more about the results of the reverse engineering, the Judge ruled that he was not in a position to say that it will yield a type of information which would make the *Prud'homme* case applicable to this case.

On balance, the Judge found that Adga had not brought itself within the exemptions set out in subs. 20(1). In particular, it had not established that there was a reasonable expectation of probable material harm as a result of the disclosure of the information in question.

**CULVER V. MINISTER OF PUBLIC WORKS AND
GOVERNMENT SERVICES**
**INDEXED AS: CULVER V. CANADA (MINISTER OF
PUBLIC WORKS AND GOVERNMENT SERVICES)**

File No.: T-1390-98

References: [1999] F.C.J. No. 1641 (QL)
(F.C.T.D.)

Date of Decision: October 27, 1999

Before: McGillis J. (F.C.T.D.)

Section(s) of *ATIA / PA* : S. 20(1)(c) *Access to Information
Act (ATIA)*

Abstract

- Whether reasonable expectation of prejudice to competitive position of third party under s. 20(1)(c)
- Balance of probabilities standard of proof

Issue

Was the Minister justified to refuse to disclose the information under para. 20(1)(c) *ATIA* on the basis that its disclosure “could reasonably be expected to prejudice the competitive position” of the third party, Standard Aero?

Facts

This was a s. 41 *ATIA* application to review the decision of the Minister of Public Works and Government Services (PWGSC) to refuse to disclose certain information in contracts between Standard Aero Ltd. and the Department of PWGSC.

The applicant requested that the Department provide a copy of a contract, including “all amendments, modifications and attachments”, entered into between the Department, on behalf of the Department of National Defence and Standard Aero. The contract pertained to the repair, overhaul and modification of Allison T56 gas turbine engines for aircraft. At the time, the applicant was the president of First Aviation Services Inc. An American subsidiary of First Aviation Services, Inc., namely National Airmotive Corp., is a competitor of Standard Aero in the industry.

Standard Aero was sent a s. 28 notice and it advised the Department that four contracts, as well as various appendices, annexes and amendments, should not be disclosed because “The information identified is confidential and proprietary to Standard Aero. The information includes pricing, fees, descriptions, forms developed by SAL etc. the disclosure of which would provide competitors with an unfair advantage in future Government and Commercial bids. Special discount offers were provided to the Government and this information would affect future business opportunities and could result in material financial loss to Standard Aero.”

The Department informed Standard Aero that some of the information was exempt from disclosure under subs. 20(1) and that the remainder of the information would be disclosed to the access requester (the applicant herein). The latter complained to the Information Commissioner (IC) who concluded that certain portions of the requested records should be released. However, the IC also found that the remaining information in the requested records had been properly withheld under para. 20(1)(b). The IC did not consider the applicability of para. 20(1)(c). The requester filed this s. 41 *ATIA* application.

The Director of the Canadian Forces Program for Standard Aero stated that the release of the disputed information would place Standard Aero “in a position of competitive disadvantage with respect to its competitors”. He said that the government has awarded the contract for the repair and overhaul of the T56 military aircraft engines to Standard Aero on a sole-source basis since 1960. Standard Aero currently has approximately 32 percent of the world market share for the repair and overhaul of T56 aircraft engines. Standard Aero’s forecast sales under the 1998 contract with the Department are substantial and represent a “significant portion” of its revenue.

Standard Aero bids for other T56 repair and overhaul contracts throughout the world, in particular for the U.S. Navy and Air Force. In the U.S., by virtue of the freedom of information legislation, the bid abstracts are publicly accessible after the awarding of the contract. However, those bids contain the final selling rates and not the costs or the profit for performing the

work under the contract. In contrast, the undisclosed portions of the contracts in question consisted “mainly of hours of work to be put into various portions of the contract and the corresponding unit price, hourly rates, and monthly rates to be charged in completing the contract”. Other evidence was given by the Director regarding how the release of the requested information would be prejudicial to Standard Aero and put it “in a position of competitive disadvantage with respect to its competitors”.

The access requester has in his possession a complete copy of the contracts in issue, except for the very specific financial and commercial information pertaining to Standard Aero and its contractual terms.

Decision

The application for judicial review was dismissed with costs.

Reasons

A review of the caselaw indicates that the exemption from access in para. 20(1)(c) requires proof, on a balance of probabilities, of a “reasonable expectation of probable harm” (see *Canada Packers Inc. v. Canada*, [1989] 1 F.C. 47 (C.A.), at pp. 59-60 and *Saint John Shipbuilding Ltd. v. Canada (Minister of Supply and Services)* (1990), 107 N.R. 89 (F.C.A.), at p. 91). Counsel for the parties agreed that the Minister bears the onus of establishing that he was justified in refusing access to the information in the requested records.

The requested information would enable Standard Aero's competitors "to calculate various pricing scenarios in order to undercut" it on the contract with the Department "or on other contracts". Furthermore, the release of the information would provide its competitors, in a fiercely competitive global industry, with "an important piece of financial and commercial information and intelligence".

The prejudicial effect of the disclosure of that information would be magnified by virtue of the fact that Standard Aero would have no access to similar information on the part of its competitors. As a result, "Standard Aero would be placed in a position of competitive disadvantage".

In the Judge's opinion the evidence presented by Standard Aero, when considered in its entirety, establishes, on a balance of probabilities, that the disclosure of the information "could reasonably be expected to prejudice" the competitive position of Standard Aero. In other words, the evidence establishes a reasonable expectation of probable harm on the part of Standard Aero."

The release of information under the applicable legislation in the United States was, in the Judge's opinion, irrelevant and unhelpful in determining the issue raised in the present proceeding.

**MERCK FROSST CANADA & Co v.
MINISTER OF NATIONAL HEALTH
INDEXED AS: MERCK FROSST CANADA & Co. v. CANADA
(MINISTER OF NATIONAL HEALTH)**

File No.: T-971-99

References: [1999] F.C.J. No. 1677 (QL)
(F.C.T.D.)

Date of Decision: November 4, 1999

Before: McGillis J. (F.C.T.D.)

Section(s) of *ATIA / PA* : S. 44 *Access to Information Act*
(*ATIA*)

Abstract

- S. 44 review of decision to disclose
- Motion to amend the application for review
- Failure to institute application within time limit prescribed in s. 44(1) *ATIA*
- Counsel presenting argument based on own affidavit

Issues

- (1) Whether counsel for the applicant can present argument based on his affidavit pursuant to Rule 82 of the *Federal Court Rules*, 1998.
- (2) Whether the applicant, due to its failure to institute an application for review within the time limit prescribed in subs. 44(1) of the *ATIA*, can amend its existing application

for review challenging the decision of the respondent to release certain records under the *ATIA* so as to include a subsequent decision made by the respondent, pursuant to Rule 302 of the *Federal Court Rules*, 1998.

Facts

This was a s. 44 application by Merck Frosst to review the decision made by the respondent on June 2, 1999 to release documents. Counsel for Merck Frosst brought a motion under Rule 302 of the *Federal Court Rules*, 1998 to amend the s. 44 application for review so to include in the existing application a challenge to a subsequent decision made by the respondent on October 5, 1999 to release other records.

Merck Frosst considered that more than one decision may be challenged in an application in circumstances where the decisions are part of an ongoing process and the facts are not different.

Merck Frosst brought this motion due to its failure to introduce an application challenging the October 5, 1999 decision within the lime limit prescribed in subs. 44(1) of the *ATIA*.

Counsel for Merck Frosst asked for leave to present argument based on his affidavit.

Subsection 44(1) provides that any third party to whom the head of a government institution is required under para. 28(1)(b) or subs. 29(1) to give a notice of a decision to disclose a record or a part thereof under the Act may, within twenty days after the notice is given, apply to the Court for a review of the matter.

Rule 302 provides that unless the Court orders otherwise, an application for judicial review shall be limited to a single order in respect of which relief is sought.

Rule 82 provides that except with leave of the Court, a solicitor shall not both depose to an affidavit and present argument to the Court based on that affidavit.

Decision

The motion to amend the application for review is dismissed.

Reasons

Issue no. 1

Given that counsel for the applicant indicated that he would not rely on any contentious matters deposed to in his affidavit, leave to present argument to the Court based on the documentary exhibits to his affidavits was granted pursuant to Rule 82 of the *Federal Court Rules*, 1998.

Issue no. 2

The records to be released as a result of the October 5, 1999 decision are not the same records as those dealt with in the earlier decision. The applicant has failed to establish that the factual circumstances underlying the two decisions were related or that the second decision was made as part of an ongoing process.

**INFORMATION COMMISSIONER OF CANADA V. MINISTER OF ENVIRONMENT CANADA AND ETHYL CANADA INC.
INDEXED AS: CANADA (INFORMATION COMMISSIONER) V. CANADA (MINISTER OF ENVIRONMENT)**

File No.: T-1125-99

References: [1999] F.C.J. No. 1760 (QL)
(F.C.T.D.)

Date of Decision: November 15, 1999

Before: Richard (C.J.) (F.C.T.D.)

Section(s) of *ATIA / PA* : Ss. 23, 36(2), 42, 45, 46, 69
Access to Information Act (ATIA)

Abstract

- Cabinet confidence
- S. 39 *Canada Evidence Act* certificate
- Time of application of certificate
- Solicitor-client privilege
- Powers of IC under s. 36(2) *ATIA* regarding use and filing of privileged records
- Federal Court's power under s. 46 *ATIA* –
- Solicitor-client privilege filed in Court's confidential file –
- Nature of proof for filing documents confidentially

Issues

The Crown brought a motion seeking an order that:

- (1) the Information Commissioner return a Cabinet confidence protected by s. 39 *Canada Evidence Act* that was inadvertently disclosed to the Information Commissioner (IC) during the course of his investigation into the *ATIA* complaint;
- (2) the Information Commissioner not use as evidence in the litigation documents that are protected by solicitor-client privilege that he collected during his investigation; and,
- (3) under Rules 151 and 152 *Federal Court Rules*, 1998, the remainder of the documents that the Privy Council Office (PCO) was compelled to produce remain confidential until the Court determines that they are relevant and necessary to determine the issues at the hearing of the application on its merits;
- (4) Ethyl Canada Inc. be included in the style of cause as an added party.

Facts

The proceeding is an application to the Federal Court, Trial Division, by the Information Commissioner under the *ATIA* for review of the refusal by the Minister of Environment to disclose “Discussion Papers, the purpose of which is to present background explanations, analyses of problems or policy options to the Queen’s Privy Council for Canada for consideration by the Queen’s Privy Council for Canada in

making decisions with respect to Methylcyclopentadienyl Manganese Tricarbonyl (MMT)". Ethyl Canada Inc. filed a motion of appearance as a party. In the course of this proceeding a preliminary motion was filed. This is a summary of the motion and its result.

It should be noted that the 3 categories of documents mentioned under the Issues heading above are not the documents sought to be accessed by the IC in his application under s. 42 *ATIA*. Rather they are those already obtained by the IC during the course of his investigation which he now seeks to file with the court in support of his application.

Decision

By order and reasons the Chief Justice:

- (a) accepted the Crown's argument and ordered the Information Commissioner to return the Cabinet confidence that had been inadvertently disclosed to him;
- (b) determined that the question of the admissibility of the solicitor-client documents should be decided by the judge hearing the application on its merits and that those documents would be filed on a confidential basis pending that determination; and
- (c) found that a compelling case for confidential filing of the remainder of the documents had not been made and, therefore, those documents could be filed on the public record;

(d) Ethyl Canada Inc. should be an added respondent and counsel for Ethyl Canada should be given access to the confidential material for the purposes of this application upon filing a written undertaking in accordance with Rule 152(2) *Federal Court Rules*, 1998.

Reasons

Issue 1

The Court ordered that the Schedule not be filed with the Court by the IC and that it be returned to the respondent.

The Deputy IC, under para. 36(1)(a) *ATIA*, sent an order to the Deputy Clerk of the PCO for “all records under the control of the PCO containing information related to Discussion Papers, within the Cabinet Papers Systems over the period of Jan. 1, 1977 to Dec. 1, 1986”. In response, the Deputy Clerk sent a letter stating that certain of the documents requested contained information constituting Cabinet confidences and were therefore excluded from the *ATIA* by s. 69 *ATIA*. The IC was given access to the documents sought, other than Cabinet confidences. The Clerk’s letter enclosed two lists, one of which is entitled the “Schedule of Excludable Documents”. This Schedule is essentially one document which briefly describes and lists all the documents which the PCO did not produce.

Later the Clerk issued a certificate under s. 39 *Canada Evidence Act* which not only covered each record referred in the Schedule but also claimed the Schedule itself as a cabinet

confidence and the Clerk's solicitor asked that the IC return the Schedule. This request has not been complied with.

The Court ruled at paragraph 50 that "A section 39 certificate can be issued at any time during the proceeding and will have effect as of the date the certificate is issued. The statutory protection is not lost where the documents have been mistakenly or inadvertently disclosed. In such a situation, section 39 will operate so as to effectively preclude the Court from examining the documents. As stated by MacKay J. in *Samson Indian Nation and Band v. Canada*, [1996] 2 F.C. 483 at pp. 522-23 (F.C.T.D.): 'In my opinion section 39 may be applied at any stage, and aside from the exceptional circumstances of Best Cleaners, once a certificate in compliance with the Act and the Court's rules is filed, the Court, and the parties to an action, may not thereafter examine the information that is certified.' As such, the certificate in this case constitutes an effective bar to the production of this document to the Court. Consequently, it will not be examined by the Court on the application for judicial review under the *ATIA* by virtue of section 39 *Canada Evidence Act*."

The IC further argued that the Federal Court does not have the jurisdiction to compel the IC to return the protected document to the PCO. In *Canada (HRC) v. Canadian Liberty Net*, [1998] 1 S.C.R. 626, Bastarache J. stated that the general administrative jurisdiction of the Federal Court should not be interpreted in a narrow fashion. Therefore the Federal Court takes the position that the IC exercises statutory powers granted by the Parliament of Canada. The protected document

was obtained through compulsion in the exercise of that statutory power. The document is protected as a matter of public policy under an enactment of the Parliament of Canada. The document has been found to have been produced by inadvertence. The return of the document was requested without delay.

Issue 2

The Court ruled that **the documents in this category for which a claim of solicitor-client privilege is asserted be filed and dealt with confidentially** in the manner set out by Rules 151 and 152 *Federal Court Rules*, 1998 but the judge hearing the application on its merits (and not the preliminary motion judge) should rule on the question of the admissibility of the solicitor-client privilege to the documents in question.

In accordance with the Supreme Court of Canada decision in *Descôteaux v. Mierzwinski*, [1982] 1 S.C.R. 860, solicitor-client privilege should only be interfered with to the extent absolutely necessary to achieve the ends of the *ATIA*. In order to fulfill the purpose provision in s. 2 of the Act, Parliament conferred broad powers of investigation and examination on the IC. For example, subs. 36(2) and s. 46 *ATIA* confer a broad power to both the IC and the Court with respect to documents obtained in the course of an investigation.

Counsel for the Minister acknowledges that subs. 36(2) *ATIA* gives the IC a special and additional power to examine documents that would otherwise be privileged from production. However, the Court rejected the interpretation of subs. 36(2) that says that the IC does not have the power to

use or disclose documents that are otherwise privileged from production. The Court also rejected the interpretation of s. 46 that says the Court only has a limited power of examination to determine whether certain documents are privileged or not.

The Court stated that the latter "...argument fails to give proper consideration to the entire wording of ss. 36 and 46 in the context of the entire *ATIA*. The power of examination conferred to the Court by virtue of s. 46 may take place notwithstanding 'any privilege under the law of evidence'. This would include the solicitor-client privilege asserted by the respondent." As noted by the IC, the Minister's interpretation of these sections would effectively preclude the judge hearing the application from examining the documents in question to determine whether or not they are legally withheld on account of privilege. Quoting from *Canada v. Solosky*, [1980] 1 S.C.R. 821, at 837 the Court said: "To make the decision as to whether the privilege attaches, the letters must be read by the judge, which requires, at a minimum, that the documents be under the jurisdiction of a court. Finally, the privilege is aimed at improper use or disclosure, and not at mere opening."

As such, the Court was of the opinion that the privilege asserted in this case cannot operate so as to prevent the IC from introducing them into the record.

On the issue of whether this part of the Motion should be ruled on by the preliminary motion judge or the hearing judge, the Court said that s. 45 *ATIA* provides that an application made under s. 42 shall be heard and determined in a summary

way. Time consuming interlocutory proceedings are not compatible with these provisions, particularly when the matter can be dealt with by the judge hearing the application.

The Court concluded that the question of solicitor-client privilege and admissibility of such documents is a question of evidence which should be left to the judge hearing the application on its merits. In the meantime, the Court ruled that the documents in question will be placed in the Court's confidential file.

Issue 3

The Court ruled that the **remaining documents will be filed on the public record.**

The Minister had argued that these documents should be treated and filed confidentially. However, the Court's position was in accordance with the Supreme Court of Canada in *A.G. (Nova Scotia) v. MacIntyre*, [1982] 1 S.C.R. 175, at 189 that "The presumption, however, is in favour of public access and the burden of contrary proof lies upon the person who would deny the exercise of the right." The onus then rests on the Minister to demonstrate that the remaining material obtained during the IC's investigation should be treated confidentially, in accordance with Rule 151(2) *Federal Court Rules*, 1998. The Minister's counsel made reference to PCO counsel's affidavit, however, the Court ruled that section 47 *ATIA* contemplates special precautions against disclosure where "the head of a government institution would be authorized to refuse disclosure". The affidavit in question only raised the possibility that the documents in question could be subject to the *ATIA*

exemptions. The Court was not satisfied that this hypothetical situation was sufficient to justify that the material be filed confidentially.

Issue 4

The addition of Ethyl Canada Inc. as a party to the proceedings is a non-controversial procedure since subs. 42(2) *ATIA* gives such person the right to appear as a party to the application. It should normally be done by a written motion, on consent, to add the requester as a respondent in the application. The draft order should provide firstly, that the style of cause is amended by adding the requester as an added respondent and, secondly, that the added party serve and file its material in the same manner as is provided by the rules for the applicant.

Comments

PCO has appealed on the solicitor-client privilege ruling and the IC has cross-appealed on the Cabinet confidence ruling (see following page for a summary of the Federal Court of Appeal decision).

**MINISTER OF ENVIRONMENT CANADA V. INFORMATION
COMMISSIONER OF CANADA AND ETHYL CANADA INC.
INDEXED AS: CANADA (MINISTER OF ENVIRONMENT) V.
CANADA (INFORMATION COMMISSIONER)**

File Nos.: A-761-99, A-762-99

References: [2000] F.C.J. No. 480 (QL) (F.C.A.)

Date of Decision April 6, 2000

Before: Létourneau, Evans, Malone JJ.A.

Section(s) of *ATIA* / *PA* : Ss. 23, 36 and 46 *Access to
Information Act (ATIA)*

Abstract

- Interlocutory motion
- Allegation of non-existence of documents
- *ATIA* complaint and investigation
- Solicitor-client privileged documents not being the object of the *ATIA* request
- Powers of the Information Commissioner to file privileged documents in court
- Powers of the Federal Court to see privileged documents
- Ability of lawyer of *ATIA* requester to see privileged documents with an undertaking of confidentiality

Issues

The appeal by the Minister in file A-761-99 is from the following conclusions of a Motions Judge:

- (1) that subs. 36(2) and s. 46 *ATIA* allow the Commissioner to file in the Court's confidential record, for possible use as evidence, documents that are protected by solicitor-client privilege where these documents were not the subject of an applicant's request under the Act; **(F.C.T.D. ruling affirmed)**
- (2) that the issue of solicitor-client privilege and the admissibility of these documents should be left to the judge hearing the review application on its merits; **(F.C.T.D. ruling affirmed)** and,
- (3) that counsel for the respondent, Ethyl Canada Inc. (Ethyl), be given access to the solicitor-client communications on an undertaking of confidentiality **(F.C.A. modified the Trial Division ruling)**.

Facts

The Information Commissioner filed an application under the *ATIA* to the Federal Court, Trial Division, under the *ATIA* to review the refusal by the Minister of Environment to disclose "Discussion Papers, the purpose of which is to present background explanations, analyses of problems or policy options to the Queen's Privy Council for Canada for consideration by the Queen's Privy Council for Canada in making decisions with respect to MMT." Ethyl Canada Inc., which had made the original access request for these documents, filed a motion of appearance as a party. In the course of this proceeding a preliminary motion was filed. The Trial Division ruled according to the three issues mentioned above.

The Commissioner indicated that he intended to support his application by placing before the Court all documents obtained during his investigation, including those protected by solicitor-client privilege. The Minister of Environment brought a motion to prevent, among other things, the Commissioner from filing and using, before the reviewing Court, documents protected by solicitor-client privilege. These documents were not the subject of the *ATIA* request but were judged relevant by the Information Commissioner during his investigation and he wanted to file them in the court's confidential record.

Decision

The Federal Court of Appeal modified in part the Trial Division decision.

Reasons

Issue 1

The Court of Appeal confirmed the Trial Division decision on this issue.

Solicitor-client information is admissible as evidence for the reviewing judge to consider confidentially for the purposes of deciding whether the s. 23 exemption has been properly invoked. The power granted by s. 46 of the Act to the Court to "examine" privileged records goes beyond a mere inspecting power: it includes the ability for the Court to use privileged communications as evidence to decide the merits of the exemption claimed and the legality of the refusal to disclose. The Court failed to see how the documents obtained by the

Commissioner in the course of his investigation could not be filed with the reviewing judge in the judicial review proceedings.

Where documents are alleged by the head of an institution not to exist, the reviewing Court obviously cannot resort to its ordinary method of reviewing a refusal decision. Unlike the situation where an exemption from disclosure is claimed, it cannot review the withheld documents to establish whether these documents truly fall within the exempt category. In such a case, the Court ruled that it is proper for the applicant or the Commissioner to proceed to file ancillary documents that are relevant to the existence of the requested documents and that can assist the Court in its independent review function of the government's refusal to disclose. Parliament cannot have intended that the Court would have the relevant evidence to exercise its supervisory function only in the case of refusals based on statutory exemptions, but not in the case of refusals based on non-existence. The Court was comforted in this view by para. 63(1)(b) of the Act which allows the Commissioner to disclose information that is necessary to a review, sought under the Act, of a refusal to disclose. The Court added that the disclosure mentioned in this last paragraph is by way of filing the information before the reviewing judge.

The Court also ruled that Parliament expressly stated as a key objective of the Act the need for an independent review of government disclosure decisions. This explains the clear and broad permission given to the Court in s. 46 of the Act to look at any record, even one that is privileged, in applications for judicial review. Indeed, s. 46 is a clear statement of intent to strip a wide variety of privileged records of their ordinary

protection from use in court. Where documents that are ancillary to an access request are the only kind of relevant evidence available in a judicial review of a refusal based on non-existence of records, there is no doubt that these documents, if they are not privileged, are admissible if they relate to the issue of existence of the requested documents. The fact that they could be privileged makes no difference since the obstacle of privilege is eliminated by the clear wording of s. 46.

However, the Court imposed a limit by saying “We believe that the documents obtained by the Commissioner, if they relate to the use of ‘discussion papers’ within Cabinet as alleged, are in principle admissible in the review proceedings. They should be admitted if the reviewing judge is satisfied that they can be of assistance in determining the merits and legality of the government’s refusal to disclose based on the claim that, since 1984, Cabinet no longer used or maintained ‘discussion papers’”.

Issue 2

The Court was of the view that the Motions Judge properly exercised his discretion when he referred to the reviewing judge the issue of the admissibility of the documents held by the Information Commissioner.

The Motions Judge acknowledged that subs. 36(2) *ATIA* gives the IC a special and additional power to examine documents that would otherwise be privileged from production. However, he rejected the Minister’s interpretation of subs. 36(2) to the effect that it does not nullify the privilege or give the IC the

power to use or disclose documents that are otherwise privileged from production.

Furthermore, the Motions Judge rejected the Minister's interpretation of s. 46 to the effect that this section confers to the Court a limited power of examination for the purposes of determining whether certain documents attract privilege or not.

The Motions Judge stated that "...this argument fails to give proper consideration to the entire wording of sections 36 and 46 in the context of the entire *ATIA*. The power of examination conferred to the Court by virtue of section 46 may take place notwithstanding 'any privilege under the law of evidence'. This would include the solicitor-client privilege asserted by the respondent." As noted by the IC, the Minister's interpretation of these sections would effectively preclude the judge hearing the application from examining the documents in question to determine whether or not they are legally withheld on account of privilege. Quoting from *Canada v. Solosky*, [1980] 1 S.C.R. 821, at 837, the Motions Judge said: "To make the decision as to whether the privilege attaches, the letters must be read by the judge, which requires, at a minimum, that the documents be under the jurisdiction of a court. Finally, the privilege is aimed at improper use or disclosure, and not at merely opening."

As such, the Motions Judge was of the opinion that the privilege asserted in this case cannot operate so as to prevent the IC from introducing them into the record.

The Motions Judge concluded that the question of solicitor-client privilege and admissibility of such documents is a question of evidence which should be left to the judge hearing the application on its merits. He nevertheless ruled that the privilege asserted for the documents in question did satisfy the Court of the demonstrated need for confidentiality and ordered that they be filed in the Court's confidential file.

Like the Motions Judge, the FCA said it was preoccupied by the inherent delay resulting from the use of interlocutory proceedings in a judicial review process designed to be expeditious and summary (see s. 45 *ATIA*). The Court stated that this case was a good and vivid example of this problem that ought to be avoided. Justice Létourneau said that the Motions Judge's decision was rendered on November 15, 1999 and, almost five months later, the review on the merits has still not taken place.

The Court of Appeal stated there was another reason why interlocutory proceedings dealing with the admissibility of evidence ought to be discouraged in this type of proceedings. The decision of the reviewing judge on the issue of admissibility or on the merits of the application for review may prove to be satisfactory to the parties, thereby evidencing either the lack of merit of the objection made or the unnecessariness of a prior interlocutory challenge (see *Szcecka v. Canada (Min. of Employment and Immigration)* (1993), 170 N.R. 58 (F.C.A.)).

Issue 3

The Court stated that it did not see how granting to counsel for Ethyl access to solicitor-client privileged information was absolutely necessary in the circumstances. The reviewing judge will see the privileged documents. In addition, the Commissioner has already seen the documents. This is not a case, as Décaré J.A. said in *Hunter v. Canada (Consumer and Corporate Affairs)*, [1991] 3 F.C. 186 (C.A.), where it is necessary to allow counsel access to confidential material to avoid the unfairness of forcing the Court to make important decisions “having heard one side of the argument only”.

In view of the fact that the documents that are the subject of the confidentiality order are exclusively documents for which a solicitor-client privilege is invoked, the Court of Appeal ordered that the paragraph in the Motions Judge’s order granting Ethyl access to confidential be deleted subject to the reviewing judge’s power, on such conditions and undertakings as he sees fit, to grant counsel for Ethyl access to the material that is found not to be so privileged.

Comments

The Minister of Environment has applied for leave to appeal to the Supreme Court of Canada.

**INFORMATION COMMISSIONER OF CANADA V. PRESIDENT OF
THE ATLANTIC CANADA OPPORTUNITIES AGENCY
INDEXED AS: CANADA (INFORMATION COMMISSIONER) V.
ATLANTIC CANADA OPPORTUNITIES AGENCY**

File No.: A-292-96

References: [1999] F.C.J. No. 1723 (QL) (F.C.A)

Date of Decision: November 17, 1999

Before: Strayer, Linden and McDonald
J.J.A. (F.C.A.)

Section(s) of *ATIA / PA*: Ss. 20(1)(b), 48 *Access to
Information Act (ATIA)*

Abstract

- S. 20(1)(b) test of confidentiality
- Actual number of jobs created by companies as result of funding by ACOA
- Actual direct evidence of confidentiality required
- Undertaking of confidentiality not overriding *ATIA*

Issue

Whether the actual number of jobs created by the companies as a result of funding from the respondent Agency was confidential when provided and whether it has been consistently treated as confidential so as to be exempt from disclosure under para. 20(1)(b) of the *ATIA*?

Facts

This is an appeal from the decision of the Trial Division ([1996] F.C.J. No. 332 (QL) (F.C.T.D.), T-690-95, March 18, 1996) which held that para. 20(1)(b) *ATIA* had been correctly applied by the Atlantic Canada Opportunities Agency (ACOA).

ACOA refused to disclose to a journalist information from a survey conducted on its behalf by Price Waterhouse concerning the actual number of jobs created by certain companies under the publicly funded Action Program. For the purposes of conducting its statistical exercise, Price Waterhouse had surveyed 607 out of over 5,000 companies participating in the Action Program. The survey form developed by Price Waterhouse contained a statement to the effect that “all information disclosed during the interview shall remain strictly confidential”. ACOA refused to disclose to the journalist the information pertaining to the actual number of jobs created in each company on the basis of para. 20(1)(b) *ATIA*. The requester thereupon complained to the Information Commissioner. The latter wrote to all of the companies surveyed advising them of their right to make representations to him as to why the information at issue was confidential. Only twenty-four companies replied. The Commissioner subsequently found the complaint to be well founded and recommended that the Agency disclose the information in question. The Agency refused to comply with this recommendation. The Information Commissioner thereupon applied for judicial review of this refusal.

The Trial Division held that the evidence established that the information concerning the actual number of jobs was private and confidential in nature. The Court noted that to find

otherwise would lead to the result that the companies which had volunteered to participate in the survey would find their information public, while the same information for the 4,500 companies that did not participate in the survey would remain protected. Not only would this result be unfair, but it would discourage companies from voluntarily providing information of this nature in the future.

Decision

The appeal is allowed.

Reasons

It is clear from s. 48 *ATIA* that the Agency had the burden of proof to satisfy the Court that it was authorized to refuse to disclose the information in question. This required the production of actual direct evidence, which in this case was needed to prove original and continuing confidentiality of the information. The Court ruled that there was no such evidence as would support a finding of confidentiality in respect of each of the companies concerned. The material chiefly relied on by the Trial Judge consisted of “representations” made to the Information Commissioner by 24 companies during the course of his investigation. These unsworn statements could not be treated as evidence even as to the confidentiality of the information of the companies making the representations, let alone as to the confidentiality of the information of all the other companies.

The undertaking of confidentiality made by Price Waterhouse to the companies surveyed cannot be determinative of disclosure obligations under the *ATIA*. The information requested was part of a government record subject to the Act.

**3430901 CANADA INC. AND TELEZONE INC. V.
THE MINISTER OF INDUSTRY CANADA; INFORMATION
COMMISSIONER OF CANADA V. MINISTER
OF INDUSTRY CANADA
INDEXED AS: 3430901 CANADA INC. V. CANADA
(MINISTER OF INDUSTRY)**

File Nos.: T-648-98, T-650-98

References: [1999] F.C.J. No. 1859 (QL)
(F.C.T.D.)

Date of Decision: November 17, 1999

Before: Sharlow J. (F.C.T.D.)

Section(s) of *ATIA* / *PA*: Ss. 21(1), 48, 49 and 53(2) *Access
to Information Act (ATIA)*

Abstract

- Licence applications
- Policy considerations
- Percentage weighting of criteria applied
- Meaning of “advice” and “recommendations”
- Disputed documents included in s. 21(1) *ATIA*
- Exercise of Minister’s discretion concerning non-release
- Costs

Issues

- (1) Whether the preliminary issues raised by the applicants (absence of minutes of meetings, timeliness of Minister's response and provision of legal advice) were well founded?
- (2) Whether the Minister's delegate erred in concluding that the disputed material meets the exemption in paras. 21(1)(a) or (b) *ATIA*?
- (3) Whether the Minister's discretion under subs. 21(1) has been properly exercised?
- (4) Whether these applications raised an important new principle so as to engage the application of s. 53(2) *ATIA*?

Facts

This is a s. 41 *ATIA* application for judicial review of the refusal of a delegate of the Minister of Industry Canada to disclose certain information requested in 1996. The Information Commissioner made an application under s. 42 for judicial review of this refusal.

In 1995, the Minister invited licence applications from parties interested in providing personal communication services at the 2 GHz frequency range. Six licences were said to be available, three for the 30 MHz block and three for the 10 MHz block. The Minister reserved the right to issue less than that number of licences. The applications were reviewed in detail by an 18-member committee called the "working group," which analyzed the applications against certain evaluation criteria and made its findings known to another committee called the

“selection panel.” The selection panel consisted of 12 individuals, including senior managers from the spectrum and telecommunications program of Industry Canada. Its function was to rank the applications in accordance with selection criteria and to provide recommendations to the Minister as to which applications should be awarded a licence. There were communications and meetings between the selection panel and the Minister. Later, the Minister announced that only four licences would be issued, two in each block. Telezone was not issued a licence.

A member of the working group and his staff developed a particular system of percentage weighting for the various factors, based upon the policy objectives they had identified. Those percentages and discussions of the policy considerations appear on various documents that were circulated to the working group, the selection panel or the Minister. An initial assessment of the applications was done by the working group, based on the original percentage weighting.

After discussions with the Minister, the percentage weightings were changed on the instructions of the Minister to reflect different priorities. The applications were reassessed on the basis of the revised weighting, and the final assessments were communicated to the Minister. The final percentage weighting given to the various criteria formed the foundation for differentiating the applications, and thus affected the Minister’s decision on which applicants would be issued licences.

In 1996, Telezone applied under the *ATIA* to compel the disclosure of documents relating to the Minister's decision. The response was not satisfactory to Telezone, which complained to the Information Commissioner (IC). The IC investigated. There were further disclosures in the course of the investigation. These disclosures did not satisfy Telezone or the IC. The IC issued a report recommending further disclosure. The Minister's delegate disagreed with the IC's recommendation and continued to withhold certain documents. That refusal resulted in these two non-parallel applications.

Some of the information Telezone seeks from these documents is not included in the IC's application. The disputed information contained, among other kinds, general information about the percentage weighting of criteria applied in assessing licence applications, policy considerations relating to the criteria, evaluation of financial plans, information about the selection of the number of licences to be awarded, information about the scores awarded to the application of Telezone and the other applicants, handwritten document containing discussion of evaluation criteria; presentation by working group to selection panel, general statements about the applicants made after the licensing decisions were announced, documents containing notes made by various participants in the working group and selection panel as to the scores and other evaluations made on various aspects of the licence applications and internal departmental correspondence relating to security arrangements, choice of personnel and procedural matters, including internal circulation of evaluation criteria.

Decision

The applications for judicial review were dismissed.

Reasons

Question 1: Preliminary issues raised by the applicants

On the issue of the **absence of minutes** taken of meetings with members of the selection panel and others, the Court was of the view that unless there is a law or legal principle that requires minutes to be kept of meetings – and the Court was referred to none – the Minister and departmental officials cannot be faulted for choosing not to keep minutes.

On the issue of **timeliness of the Minister's response** the Court found no fault with anyone for the time required for the debate between the Department's officials and the IC as to the interpretation and scope of the Act, and the basis for the exercise of the Minister's discretion. The Court stated (at paras. 34, 36 and 37):

Telezone complains that the Minister's response to its application for disclosure of documents has consumed over three years, which far exceeds the time allowed by the Act to answer a request for information. [Para 34.]

...

This history suggests that until the Information Commissioner became involved, Ministry officials did not fulfil their statutory obligation to find the requested information. I do not know whether their failure was caused by a lack of understanding of their legal

obligations, or something else. However, that failure was ultimately remedied by the intervention of the Information Commissioner. It is part of the function of the Information Commissioner to accomplish just that. It is unfortunate that the process took as long as it did, but the Act does not provide a remedy for tardiness. [Para. 36.]

Once the Information Commissioner's investigation began, progress was made in the disclosure process. Further delay resulted from a continuing debate between the Minister's officials and the Information Commissioner as to the interpretation and scope of the Act, and the basis for the exercise of the Minister's discretion. There is no evidence that the debate was motivated by improper considerations. I find no fault with anyone for the time required for that debate to reach its present state. [Para. 37.]

On the issue of the **Minister acting contrary to legal advice** the Court said (at paras. 38 to 41):

Telezone argues that the Minister has maintained the refusal to disclose certain material in the face of a legal opinion that the information should be disclosed. [Para. 38.]

To the latter argument the Judge replied:

I do not read this memorandum (i.e., legal opinion) as providing any support for the application of Telezone. It is not and does not purport to be an opinion that the disputed material should be disclosed. The author

characterizes her comments as abstract, given without knowledge of the actual documents. She says the memorandum is intended to give only a “broad brush view of possible exemptions or exclusions that might apply to the various categories of documents. [Para. 40.]

The December 11, 1995 memorandum does not indicate any error of law and is not evidence of bad faith on the part of the Minister. [Para. 41.]

Question 2: Interpretation and application of subs. 21(1)(a) and (b) ATIA

On the question of the proper interpretation of subs. 21(1), Sharlow J. said:

There is no authority on the meaning of these provisions, though there is some jurisprudence on similar provisions in other statutes. [Para. 43.]

The interpretation of a statutory exception in the Act must respect the purpose of the Act as stated in subsection 2(1) while at the same time give effect to the purpose of the exception. The right of the public to know the workings of government is not absolute. It must yield to the values sought to be protected by the statutory exceptions. [Para. 44.]

The exceptions in paragraphs 21(1)(a) and (b) are aimed at preserving the integrity of the government decision making process. The underlying policy consideration is that too much public disclosure could inhibit open and frank communication between government advisers and

decision makers. [Para. 45.]

On the issue of **whether “advice” necessarily had to propose a particular course of action** in order to be more than factual in nature (as argued by the IC), Sharlow J. stated at para. 56:

...it seems to me that a discussion of policy options that concludes with a recommendation is a “recommendation” within the meaning of paragraph 21(1)(a), but **“advice”** is a much broader concept. In its ordinary sense, “advice” could include the discussion of policy matters or policy options **even if there is no suggested conclusion** as to the resolution of the policy debate. [Emphasis added.]

And further (at para. 57), she says:

The Minister argues that the information in issue under this heading is the cornerstone of the advice given to the Minister and represents the collective view of the Minister and his advisers as to the relative importance of the various factors, and the policy reasons for their advice. To characterize this information as being outside the section merely because it is not clearly labelled as “advice” or “recommendations”, or because it does not in every case appear in a document that expressly recommends a course of action to the Minister, is to prefer form to content. Each of the documents in which this information appears is fundamentally advisory in nature.

And also (at para. 58):

It is not always possible to put “facts”, “advice” and “recommendations” in airtight compartments. Many documents have more than one aspect. For example, an official may advise the Minister that a particular criterion ought to be given a particular weighting for a certain policy reason, or recommend that an application with a certain characteristic ought to be awarded a specified number of points. A written record of such advice or recommendation is correctly described as “advice or recommendations” to the Minister even if it is also a record of the fact that the official considered a particular weighting or awarding of points. In such a case, the exception in paragraph 21(1)(a) applies despite the factual aspect of the record.

And finally (at para. 59):

Based on the source and function of the documents that refer to the weighting percentages and related policy discussions, I have concluded that this information is an essential and substantive component of the advice or recommendations made to the Minister in connection with his decision to grant the licences. It follows that this material is information the Minister may refuse to disclose.

Judge’s ruling regarding evaluation of financial plans

On the issue of another memorandum, Sharlow J. stated (at para. 63):

This memorandum describes facts, in the sense that the writer is describing events that occurred. Those events,

however, comprise the analysis that the writer and his colleagues and consultants undertook in reaching their conclusions. The entire memorandum is an account of deliberations by one or more government officials. To the extent that it consists of advice to the working group as to the merits of the financial aspects of the licence applications, it also falls into the category of advice or recommendations.

Information about the selection of the number of licences to be awarded

The main document on this subject is a memo from the Deputy Minister to the Minister and others, with three attachments. The subject of the memo is the decision to be made by the Minister as to the number of licences to be awarded in the 30 MHz block.

In her analysis of the above-noted information, Sharlow J. also said (para. 70) that:

The introductory paragraph informs the Minister that there is a policy decision to be made as to the number of licences to be awarded. As this is **inextricably tied to the advice that follows**, it is within the scope of paragraph 21(1)(a). [Emphasis added.]

Regarding **bridging information**, the Judge added (para. 72):

The top of the third page is a paragraph that forms a bridge between the account of deliberations and the advice or recommendations to the Minister which follow.

Given the context, that paragraph is also information that the Minister may refuse to disclose.

The Court also ruled (at para. 71) that information informing the Minister that there is a policy decision to be made, the options explained and discussed, and a recommended course of action all constitute advice and recommendations which are exempt under subs.21(1). Also protected by subs. 21(1) is a document that is a copy of a presentation of overhead projection slides summarizing the policy arguments relating to the decision to be made by the Minister as to the number of licences to be awarded (para. 75). Also covered by this subsection is an e-mail from a member of the working group to other members which sets out a **preliminary analysis of some of the policy issues to be discussed in formulating the recommendations** to the selection panel and thus to the Minister. These are an account of deliberations by the author and a record of advice and recommendations. (Para. 76.)

Information about the scores awarded to the application of Telezone and other applicants

Various documents are ruled to be advice and recommendations, including a **discussion of the implications of the Minister's decision as to the number of licences to be granted** in each block.

Statements about the applicants made after the licensing decisions were announced

Only two sentences in a memo are in issue. Both briefly state the **reasons for certain conclusions** reached with respect to

specific aspects of two of the licence applications.

Sharlow J. stated:

I read both statements as an account of deliberations. They do not fall outside that category merely because they were made after the deliberations were concluded. [Para. 86.]

Documents containing notes made by various participants in the working group and selection panel as to the scores and other evaluations made on various aspects of the licence applications

All of this material is a **written record of the conclusions reached by members of the working group and the selection panel at various stages of the evaluation process, with some analysis included in some documents.** This material may properly be characterized as an account of deliberations, but as it came into existence as part of the process of preparing advice for the selection panel or the Minister, as the case may be, it also comes within the category of advice or recommendations. **It is not relevant that the final advice or recommendation of each person is not recorded in the documents.** The Minister may refuse to disclose this information. [Para. 88.] [Emphasis added.]

Internal Departmental correspondence relating to security arrangements, choice of personnel and procedural matters, including internal circulation of evaluation criteria

These documents disclose that careful consideration was given to questions of the security and fairness of the deliberative process. They are ancillary to the decisions as to the granting of the licences. The Court said about these documents (at para. 91):

The fact that these documents embody the **discussions of the procedural issues of concern to Ministry officials** mark them as accounts of deliberations. As well, they apparently formed the basis of advice to the Minister on procedural matters. On either ground the Minister may refuse to disclose them. [Emphasis added.]

Question 3: Remedy and review of exercise of Minister's discretion

On the issue of the applicable **remedy with respect to any material found by the Court to be *outside the scope* of s. 21**, Sharlow J. said the following (at para. 24):

In this case, it is agreed that the only appropriate remedy with respect to any of the disputed material that is found to be outside the scope of paragraph 21(1)(a) or (b) is to order disclosure.

However, referring to the decisions in *Canadian Council of Christian Charities v. Canada (Minister of Finance)*, [1999] F.C.J. No. 771 (QL) (F.C.T.D.), *Kelly v. Canada (Solicitor General)* (1992), 53 F.T.R. 147 (F.C.T.D.), *Dagg v. Canada*

(*Minister of Finance*), [1997] 2 S.C.R. 403 and *Canadian Jewish Congress v. Canada (Minister of Employment and Immigration)*, [1996] 1 F.C. 268 (T.D.), the Court said (at para. 25) that the **remedy with respect to any disputed material that is found to be *within the scope* of para. 21(1)(a) or (b) will be to refer the matter back to the Minister.**

With respect to any disputed material that is found to be within the scope of these exceptions, it will be necessary to review the decision of the Minister's delegate to refuse disclosure. If an error is found with respect to the exercise of the Minister's discretion, the only possible remedy is to refer the matter back to the Minister with a direction to consider or reconsider the exercise of his discretion. It is open to the court to retain jurisdiction to ensure that the Minister's discretion is exercised in a timely fashion.

On the issue of the **standard of review** for s. 21, the Court referred to the *Canadian Council of Christian Charities* and the *Dagg* decisions and said at para. 22:

The threshold question in this case is whether the Minister's delegate erred in concluding that the disputed material meets the description in paragraphs 21(1)(a) or (b). On that question the standard of review is correctness.

On the issue of the **review of the exercise of the Minister's discretion**, the Court will review two things under subs. 21(1) *ATIA*, namely whether the exempted information is actually protected by this exemption and, then, the exercise of the Minister's decision to refuse to disclose.

The Court, quoting from the *Kelly* decision which was quoted with approval in the dissenting reasons of La Forest J. in *Dagg*, stated that the scope of judicial review of a discretionary refusal to disclose information is the following (at para. 93):

In my view in reviewing such a [discretionary] decision the Court should not attempt to exercise the discretion *de novo* but should look at the document in question and the surrounding circumstances and simply consider whether the discretion appears to have been exercised in good faith and for some reason which is rationally connected to the purpose for which the discretion was granted.

Is there a duty on the Minister (under s. 48 *ATIA*) to file an affidavit which explains how he exercised his discretion? In other words, is it correct to say that the Minister has no authority to refuse to disclose a document unless he proves he has made an error-free decision about whether to refuse to disclose it? The Court answered “no”. The Court said that s. 48 does not displace the general principle that the discretion is the Minister’s to exercise. It said (at para. 101):

The important point, however, is that wherever the burden of proof lies, **all of the evidence must be considered**. Thus, even if the applicants are correct and the burden of proof is on the Minister with respect to the discretionary aspect of his decision to refuse to disclose, he is not precluded from meeting that burden through evidence adduced by others. [Emphasis added.]

The only evidence on the application record relating to the propriety of the exercise of the Minister's discretion is hearsay. The Court ruled that "hearsay evidence cannot be rejected out of hand. But it should not be accepted without considering whether it is necessary and reliable. If it is accepted, the fact that it is hearsay merely goes to its weight."

The Court examined a variety of documents to determine how the discretion was exercised: a December 8, 1997, letter from a Ministry official to the IC, internal Ministry documents predating that letter that discuss the possibility of the potential harm to the integrity of the decision making process that might result from disclosure. There is also an extensive discussion of the factors relevant to the discretionary aspects of s. 21 in a July 4, 1997, letter from a Ministry official to the IC. The Court concluded that the Minister's discretion had been properly exercised.

Question 4: Costs

The Court found that the applicants were entitled to an award of costs pursuant to subs. 53(2). The case involved questions turning on the interpretation of paras. 21(1)(a) and (b) that have not been considered before. Although not particularly difficult, the questions nevertheless were important in relation to the Act.

The Court ruled that each applicant was entitled to its own award of costs and should not be required to share a single award.

Comments

This decision is being appealed.

**INFORMATION COMMISSIONER OF CANADA V. COMMISSIONER
OF THE ROYAL CANADIAN MOUNTED POLICE
INDEXED AS: CANADA (INFORMATION COMMISSIONER) V.
CANADA (ROYAL CANADIAN MOUNTED POLICE)**

File No.: T-635-99

References: [1999] F.C.J. No. 1860 (QL)
(F.C.T.D.)

Date of Decision : November 18, 1999

Before : Cullen J.

Section(s) of *ATIA* / *PA* : Ss. 19, 42(1)(a) and 48 *Access to
Information Act (ATIA)* and 3(b), (j)
and 8(2)(m) *Privacy Act (PA)*.

Abstract

- Public servant's federal government employment history (ss. 3(b) and 3(j) *PA*)
- Personal information
- Institution's discretion under s. 19(2) *ATIA* and s. 8(2)(m) *PA*

Issues

- (1) Does the federal institution have the burden and onus of proof to establish that the exception of s. 19 should apply? (Yes)
- (2) Relevance of the *ATIA* purpose in interpreting s. 3(j) of the *PA*.
- (3) Whether the information is personal information (Yes) and if

so, whether the information is part of an exemption to the definition of personal information. (Yes for the present or last held position)

(4) Whether the respondent properly exercised his discretion under s. 19(2) of the *ATIA*. (No)

Facts

In June 1998, the RCMP received an access request for postings, past and present, of four officers, the copies of all public complaints filed against each of them and the name and address for service of members or former members who served in the RCMP detachment of Baddeck, Nova Scotia in August 1986.

In July 1998, the RCMP exempted all information from disclosure under subs. 19(1) of the *ATIA*. The institution concluded that the information in question related to the employment history of the officers. Therefore, the information was personal information pursuant to s. 3 of the *PA*.

The requestor complained in July 1998 to the Information Commissioner (IC). After investigation, the RCMP agreed, in October, 1998, to release information concerning the current postings and positions of the officers and the last posting and position of the former officer who had served in Baddeck prior to his retirement.

In January 1999, the IC asked the RCMP to disclose all the information identified in the request claiming that this information was exempted from the definition of personal information by para. 3(j) of the *PA*.

Decision

The information requested is personal information and therefore was not required to be disclosed in view of subs. 19(1) of the *ATIA*.

The respondent failed in his exercise of discretion required under subs. 19(2) of the *ATIA*. The Court ordered the respondent to consider whether the information should be released pursuant to subpara. 8(2)(m)(i) of the *PA*.

Reasons

Issue 1

The Court recognizes that s. 48 of the *ATIA* lays the burden of proof squarely on the RCMP to establish that the institution is authorized not to disclose the requested information.

Issue 2

The purposes of the *ATIA* and the *PA* should be read together involving a balance of competing values (*Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403).

Issue 3

After careful consideration and balancing of the respective interests entrenched in both enactments, the Court concludes that the general nature of para. 3(j) is not retrospective. Therefore, subparas. 3(j)(i) to (iii) apply only to a public servant's current position or to the position last held by a former public servant. The Court stated (at para. 24):

Were all subparagraphs of para. 3(j) given a retrospective bearing, there would be little left to contemplate in private and little meaning to the protection of employment history given by para. 3(b). Subparagraph (iii) in particular contains many of the touchstones of a public servant's career and should be thrown into the public sphere only on the clearest of indications in respect of Parliamentary intentions.

Issue 4

The Court relies on Justice La Forest's writings in Dagg who in turned cited with approval Strayer J. in *Kelly v. Canada (Solicitor General)* (1992), 53 F.T.R. 147 (F.C.T.D.) where the Court wrote:

...the Court should not itself attempt to exercise the discretion *de novo* but should look at the document in question and the surrounding circumstances and simply consider whether the discretion appears to have been exercised in good faith...

There is no evidence that the RCMP has exercised its statutory discretion to consider whether the information in question might be disclosed pursuant to para. 8(2)(m) of the *PA*.

The respondent has failed in his exercise of discretion required under subs. 19(2) of the *ATIA*.

Comments

1. This decision is being appealed by the IC.
2. Although subparas. 3(j)(i) to (iii) are not retrospective, the Court *in obiter* is of the view that subparas. 3(j)(iv) and (v) have historical application. The Court's basis for such a conclusion is in the wording of these two subparagraphs which refer both to the term "in the course of employment".

**CHIEF RALPH AKIWENZIE ON BEHALF OF THE CHIPPEWAS OF
NAWASH FIRST NATION V. THE QUEEN AS REPRESENTED BY
THE MINISTER OF INDIAN AND NORTHERN AFFAIRS CANADA
AND THE ATTORNEY GENERAL OF CANADA
INDEXED AS: CHIPPEWAS OF NAWASH FIRST NATION V.
CANADA (MINISTER OF INDIAN AND NORTHERN AFFAIRS)**

File No.: A-721-96

References: [1999] F.C.J. No. 1822 (QL)
(F.C.A.)

Date of Decision: November 23, 1999

Before: Stone, Isaac and Rothstein JJ.A.
(F.C.A.)

Section(s) of *ATIA / PA*: Ss. 13, 53 *Access to Information
Act (ATIA)*

Other statutes: S.15 *Canadian Charter of Rights
and Freedoms*

Abstract

- S. 20(1)(b) *ATIA*: Financial information that is confidential
- Fiduciary duty of the Government of Canada and the *ATIA*
- Information that makes reference to Indian land
- Argument that s. 13 *ATIA* discriminatory for not including Indian bands and contrary to s. 15(1) of the *Canadian Charter of Rights and Freedoms*

Issues

- (1) Is the information confidential under para. 20(1)(b) *ATIA*?
- (2) Does the Government of Canada have a fiduciary duty to the appellants not to disclose the information in question because some of it relates to Indian land?
- (3) Is s. 13 *ATIA* discriminatory because it provides for confidentiality of information received by the federal government from other governments but not from Indian bands?

Facts

This appeal and the *McBride* appeal (A-469-97) relate to decisions allowing for disclosure of information under the *ATIA*. Both appeals were ordered to be heard together.

Both appeals arise because the appellants oppose disclosure of information submitted to the Department of Indian and Northern Affairs by their respective First Nations. The information includes correspondence, band council resolutions, and minutes of band council meetings. In some of the documents there is reference to land.

The ATIP Coordinator for DIAND decided to allow disclosure of the documents at issue in each case. Applications were taken to the Federal Court Trial Division to review the decisions of the Coordinator. Both applications were dismissed (see (1996), 116 F.T.R. 37 (F.C.T.D.) with respect to the Trial Division decision in *Chippewas* and [1999] F.C.J. No. 676 (F.C.T.D.) with

respect to the Trial Division decision in McBride (indexed as: *Timiskaming Indian Band v. Canada (Minister of Indian Affairs and Northern Development)*).

Decision

The appeal is dismissed.

Reasons

Issue 1

Is the information confidential under para. 20(1)(b) ATIA?

The appellants say they submitted the information with the expectation that the government would keep it confidential. However, before an expectation of confidentiality argument can be made, the documents in question must come under para. 20(1)(b). This paragraph deals with information that is financial, commercial, scientific or technical. The appellants argue that the information is financial. The Court held that “Clearly, it is not.” The Court held that the only basis for the appellants’ argument is that some of the documents refer to land and since land is an asset, there is a financial connotation to it. Without defining what financial information consists of, the Court was satisfied that merely because documents contain references to land, they do not constitute financial information.

Issue 2

Does the Government of Canada have a fiduciary duty to the appellants not to disclose the information in question because some of it relates to Indian land?

The Court said that “We are not dealing here with the surrender of reserve land, as was the case in *Guerin v. The Queen* [[1984] 2 S.C.R. 335]. Nor are we dealing with Aboriginal rights under s. 35 of the Constitution Act, 1982. This case is about whether certain information submitted to the government by the appellants should be disclosed under the *ATIA*. The government is acting pursuant to a public law duty. Fiduciary obligations do not arise in these circumstances.”

Issue 3

Is s. 13 *ATIA* discriminatory because it provides for confidentiality of information received by the federal government from other governments but not from Indian bands?

The appellants relied on subs. 15(1) of the *Charter*. The opening words of subs. 15(1) are “Every individual...” The claim here is that the federal government is discriminating between governments. The Court of Appeal agreed with Cullen J. in *McBride* that “if the appellant is claiming to be a government within the meaning of para. 13(1)(d) of the Act, then it cannot claim, likewise, the protection of s. 15 of the *Charter*, protection which is afforded to individuals, and not governments”.

The Court was of the view that there is limited evidence of significant probative value on the question of whether an Indian band is a government of the same nature as those referred to in s. 13 *ATIA*. The Court did not say that the question of Aboriginal self-government is not a well-known

issue that is currently subject to public debate. The Court, it said, must base its decision on evidence and on a matter of this significance and complexity, much more evidence would have to have been adduced to prove the appellants' contention.

Finally, the Court said that there is no evidence whatsoever that the exclusion of Indian bands from s. 13 *ATIA* was in any way related to grounds of discrimination referred to in subs. 15(1) of the *Charter* and, in particular, race or ethnic origin.

**MERCK FROSST CANADA & Co. v.
MINISTER OF NATIONAL HEALTH
INDEXED AS: MERCK FROSST CANADA & Co. v.
CANADA (MINISTER OF NATIONAL HEALTH)**

File No.:	T-971-99
References:	[1999] F.C.J. No. 2000 (QL) (F.C.T.D.)
Date of Decision	December 14, 1999
Before	Blais J. (F.C.T.D.)
Section(s) of <i>ATIA</i> / <i>PA</i> :	S. 44 <i>Access to Information Act</i> (<i>ATIA</i>)

Abstract

- S. 44 review of decision to disclose
- Leave to amend application under s. 44 *ATIA*
- *Res judicata*: similar motions based on the same grounds and same evidence

Issue

Whether the application for review challenging the decision of the respondent to release certain records under the *ATIA* can be amended to incorporate a subsequent decision made by the respondent.

Facts

This is a motion by Merck Frosst for leave to amend an application for review of the respondent's decision to disclose some documents in order to incorporate a request for review of a subsequent decision of the respondent to disclose other documents.

There was a s. 44 application by Merck Frosst to review the decision made by the respondent on June 2, 1999 to release documents. On October 5, 1999, the respondent advised Merck Frosst of its decision to disclose other documents. Merck Frosst was also advised of the twenty-day delay that it had for seeking review of the decision, which was no later than October 25, 1999. Merck Frosst failed to bring an application pursuant to s. 44 of the *ATIA* before the Court within the twenty-day time limit prescribed.

On November 4, 1999, Merck Frosst filed a motion to amend the application for review in order to incorporate in that application a request for review of the decision entered on October 5, 1999.

On November 10, 1999, Merck Frost filed an application for an extension of the time limit prescribed and leave to file an application pursuant to subs. 44(1), that is two weeks late.

Merck Frosst argues that this motion is different from the one filed on November 4, 1999 which was dismissed by McGillis J. ([1999] F.C.J. No. 1677 (QL) (F.C.T.D.), T-971-99) on the ground that there is now supplementary evidence in support of this motion.

Decision

The motion is dismissed with costs.

Reasons

When a party fails before the Court on a motion for leave to amend an application for review, this same party cannot bring back a similar motion before the Court based on the same grounds when the same evidence was available the first time the party presented its motion.

The evidence before the Court is the same evidence which was before the Court when Madame Justice McGillis rendered her decision on November 4, 1999. McGillis J. ruled that the applicant had failed to establish that the factual circumstances underlying the two decisions were related. She concluded that the application should not be amended. This question is now *res judicata*.

This motion cannot be an appeal of Justice McGillis' decision. This Court has no jurisdiction to revisit Justice McGillis' decision.

**MERCK FROSST CANADA & Co. v.
MINISTER OF NATIONAL HEALTH
INDEXED AS: MERCK FROSST CANADA & Co. v. CANADA
(MINISTER OF NATIONAL HEALTH)**

File No.: 99-T-38

References: [1999] F.C.J. No. 2001 (QL)
(F.C.T.D.)

Date of Decision: December 14, 1999

Before: Blais J. (F.C.T.D.)

Section(s) of *ATIA / PA*: S. 44 *Access to Information Act*
(*ATIA*)

Abstract

- S. 44 review of decision to disclose
- Application for extension of time limit under s. 44

Issue

Whether the Federal Court has jurisdiction to waive or extend the time limit prescribed in subs. 44(1) in order to authorize a request for review under s. 44.

Facts

This was a motion by Merck Frosst seeking an extension of the time limit prescribed in subs. 44(1) *ATIA* and leave to file an application pursuant to s. 44.

On October 5, 1999, the respondent advised Merck Frosst of its decision to disclose certain documents to a requester. Merck Frosst was also advised of the twenty-day delay that it had for seeking review of the decision, which was no later than October 27, 1999. On October 7, 1999, the notice was received by Merck Frosst.

On November 10, 1999, counsel for Merck Frosst, who had failed to bring an application pursuant to s. 44 of the *ATIA* within the twenty-day time limit prescribed in s. 44, filed a motion for an extension of the time limit and for leave to file an application pursuant to subs. 44(1).

Subsection 44(1) provides that any third party to whom the head of a government institution is required under para. 28(1)(b) or subs. 29(1) to give a notice of a decision to disclose a record or a part thereof under this Act may, within twenty days after the notice is given, apply to the Court for a review of the matter.

Decision

The motion was dismissed with costs.

Reasons

The statutory period under subs. 44(1) is a strict delay and the Court has no jurisdiction to set it aside or to extend it.

Blais J. relied on *Bearskin Lake Air Service v. Canada (Department of Transport)* (1996), 199 F.T.R. 282 (F.C.T.D.) where Richard J. concluded that the Federal Court had no jurisdiction to waive or extend the time limit prescribed in subs. 44(1). “There is no provision in subs. 44(1) such as is found under s. 41 which allows the Court to extend the time either or after the expiration for filing an application.” Richard J. was of the view that he was bound by three decisions of the Federal Court of Appeal. All three cases were motions for extension of time filed after the expiration of the period of time prescribed in a provision of the *Custom Act* by which the Court is not specifically authorized to extend the time.

**GROUPE DORCHESTER/ST-DAMASE, THE
COOPÉRATIVE AVICOLE, NOW KNOWN AS
EXCELDOR COOPÉRATIVE AVICOLE V. AGRICULTURE AND
AGRI-FOOD CANADA AND BERNARD DRAINVILLE
INDEXED AS: GROUPE DORCHESTER/ST-DAMASE V.
CANADA (AGRICULTURE AND AGRI-FOOD)**

File No: T-1797-98

References: [1999] F.C.J. No. 1987 (QL)
(F.C.T.D.)

Date of Decision: December 30, 1999

Before: Rouleau J. (F.C.T.D.)

Section(s) of the *ATIA / PA*: S. 44 *Access to Information Act*
(*ATIA*)

Abstract

- Third party
- Judicial review under s. 44 *ATIA*
- Third party's standing to appear as respondent

Issues

- (1) Does the Department-respondent have standing to appear as respondent in an application for judicial review filed by a third party under s. 44 of the *ATIA*?
- (2) Is the third party's motion to stay proceedings well-founded?

Facts

This is an appeal from a decision by a prothonotary to dismiss the motion for dismissal brought by the appellant (the third party) and that ruled that the Department-respondent had the right to fully participate in the application for judicial review filed under s. 44 of the *ATIA*. The prothonotary had also dismissed the motion for suspension of deadlines brought by the third party.

Decision

The third party's appeal from the motion for dismissal is dismissed.

Reasons

Issue 1

The Department-respondent has standing (*locus standi*) to appear as respondent in the proceedings at issue. The Court was not convinced that the third party discharged its burden to show that the prothonotary's discretionary order was clearly wrong and that his exercise of discretion was based upon a wrong principle or a misapprehension of the facts.

Issue 2

The third party did not raise any fact supporting the claim that it would suffer the balance of convenience. In the instant case, a motion to stay proceedings until the Federal Court of Appeal has ruled on the issue of admissibility cannot be allowed in fact or in law.

**COOPERATIVE FÉDÉRÉE DU QUÉBEC AND SOCIÉTÉ EN
COMMANDITE OLYMEL V. AGRICULTURE AND AGRI-FOOD
CANADA AND BERNARD DRAINVILLE
INDEXED AS: COOPÉRATIVE FÉDÉRÉE DU QUÉBEC V. CANADA
(AGRICULTURE AND AGRI-FOOD)**

File No.: T-1798-98

References: [2000] F.C.J. no 26 (QL) (F.C. Trial
Division)

Decision rendered: January 7, 2000

Before: Pinard (F.C. Trial Division.)

Section(s) of the AIA/PA: Ss. 20(1)(b), (c) and (d) and 44
Access to Information Act (ATIA)

SUMMARY

- Inspection reports collected by the government
- S. 20(1)(b) and requirement that record be supplied by third party
- Art. 20(1)(c) and (d) and burden of proof: reasonable expectation of probable harm
- Reasonable expectation of probable harm and age of records
- Reasonable expectation of probable harm and negative content of reports
- Reasonable expectation of probable harm and possibility of critical media comments

Issue

Should the disclosure of the records and information requested be refused under para. 20(1)(b), (c) or (d) of the *Access to Information Act*?

Facts

This is an application for judicial review under section 44 AIA of the decision of Agriculture and Agri-Food Canada to disclose records requested under the AIA. The request for access sought to obtain disclosure of copies of “audit reports” on establishments in Quebec, Ontario, Alberta and British Columbia that received ratings of B, C or F from the Canadian Food Inspection Agency during the period commencing on January 1, 1996.

The applicants were given notice under subs. 27(1) AIA and objected to the disclosure of the inspection reports concerned. Citing the complexity and imprecision of the information, and its confidential and prejudicial nature, the applicants then invoked the exceptions provided in para. 20(1)(c) and (d). With regard to the precise nature of the perceived harm, the applicants referred to the media coverage, the financial consequences of disclosure and their effect on the applicants’ competitive position and future contracts.

The reports in question were periodic reports, from one to three year old, dealing strictly with the condition of the establishment visited, and not the quality of product handled there.

Decision

The application for judicial review was dismissed. The applicants were unable to discharge the burden of proving that the records requested were protected under para. 20(1)(c) and (d) of the *Access to Information Act*.

Reasons

The Court considered and rejected the possibility of applying para. 20(1)(b), stating that the records in question were records collected by a government agency, and not records supplied by the third party to the government agency (see *Canada (Information Commissioner) v. Atlantic Canada Opportunities Agency*, [1999] F.C.J. no 1723 (QL) (F.C.A.), A-292-96, rendered on November 17, 1999).

Regarding the burden of proof required under para. 20(1)(c) and (d), Pinard J., relying on the decision in *Canada Packers Inc. v. Canada (Minister of Agriculture)*, [1989] 1 F.C. 47 (C.A.), stated that it is settled, in the case of the Act, that disclosure is the rule and exemption the exception, and that those claiming the exemption have the burden of proving their right to this exemption. He added the following [translation]: “I believe that the exceptions to the right of access contained in paragraphs (c) and (d) must be interpreted as requiring a reasonable expectation of *probable* harm”. He interpreted this test by stating the following [translation]: “This test resembles the test that was adopted, in a different context, by Lacourcière J. in *McDonald v. McDonald*, [1970] 3 O.R. 297 (H.C.), at p. 303: “Reasonable expectation ... implies a confident belief”.

Moreover, Pinard J. states that this interpretation of the burden of proof was confirmed in *Saint John Shipbuilding Limited v. Canada (Minister of Supply and Services)* (1990), 67 D.L.R. (4th) 315 (F.C.A.), from which he quotes the following excerpt: The applicant now invites us to say that this is wrong, first, because para. (c), while conveying the notion of “prejudice” (or harm), does not set so high a threshold as probability and, second, because para. (d) speaks only of interference and does not require any showing of harm at all. We do not agree. The setting of the threshold at the point of probable harm seems to us to flow necessarily from the context, not only of the section but of the whole statute, and is the only proper reading to give to the French text (“risquerait vraisemblablement de causer des pertes”): compare *Re Kwiatkowsky and Minister of Manpower & Immigration* (1982), 142 D.L.R. (3d) 385 at p. 391, [1982] 2 S.C.R. 856, 45 N.R. 116, per Wilson J.”

In this decision, the Federal Court of Appeal states, in reference to para. 20(1)(d), that the probability of interference with the negotiations must be serious, because the word “interfere” must be taken to mean “obstruct”.

Pinard J. noted that the records in question consisted of inspection reports of the same type as those considered by the Federal Court of Appeal in *Canada Packers*, in which the Court stated the following: “In the cases at bar, I have carefully scrutinized each report and have also considered them in relation to the others requested. (I refrain from explicit comment on their contents to preserve their confidentiality through the time for appeal). I would say in summary form

that, although all are negative to some degree, I am satisfied in each case that, particularly now, years after they were made, they are not so negative as to give rise to a reasonable probability of material financial loss to the appellant, or of prejudice to its competitive position or of interference with its contractual or other negotiations.” Pinard J. largely applied these remarks to the instant case.

Finally, Pinard J. concluded that access to information must not be denied merely because this information may be unfavourable to the persons it concerns. This is all the more true because, in the instant case, the information concerns the condition of establishments for which the applicants who operate them are responsible. These applicants had to prove, in order to prevent disclosure of this information under para. 20(1)(c) and (d) of the Act, that the information was so unfavourable that its disclosure could give rise to a reasonable probability of material financial loss to them, or of prejudice to their competitive position, or of interference with their contractual or other negotiations (see *Merck Frosst Canada Inc. v. Canada (Minister of National Health and Welfare)* (1988), 20 F.T.R. 73 (F.C. Trial Division), at p. 78).

**BONNIE PETZINGER V. INFORMATION COMMISSIONER
OF CANADA AND MICHEL DRAPEAU AND
THE ATTORNEY GENERAL OF CANADA
INDEXED AS: CANADA (ATTORNEY GENERAL) V.
CANADA (INFORMATION COMMISSIONER)**

File Nos.: A-692-97, A-693-97, A-726-97

References: [2000] F.C.J. No. 17 (QL) (F.C.A.)

Date of Decision: January 13, 2000

Before: Richard C.J., Robertson and
Evans J.J.A. (F.C.A.)

Section(s) of *ATIA / PA* : Ss. 35 and 37 *Access to
Information Act (ATIA)*

Abstract

- Complaint by requester that Access Coordinator in conflict of interest when dealing with the requester
- Investigation by Information Commissioner and report finding no conflict of interest but concluding reasonable apprehension of bias
- Application for judicial review challenging Commissioner's findings struck out
- No error by Trial Division Judge
- Finding of reasonable apprehension of bias not adversely affecting Coordinator

Issue

Did the Trial Judge err in striking out the appellant's originating notice of motion for judicial review challenging the appropriateness of the Information Commissioner's finding that there was reasonable apprehension of bias of the part of the appellant?

Facts

Following a complaint by the requester that DND's Access Coordinator was in a position of conflict of interest in dealing with his requests for information, the Information Commissioner (IC) initiated an investigation and concluded in his report that although there was no conflict of interest, past actions and positions taken by the Coordinator raised a reasonable apprehension of bias against the requester. The Information Commissioner also recommended that the named Access Coordinator not be involved in decision-making with respect to the administration of requests under the *ATIA* made by the requester.

Some time after the IC's report was sent to DND, the Attorney General of Canada and the Access Coordinator filed an originating notice of motion for judicial review, pursuant to s. 18.1 of the *Federal Court Act*, challenging the Commissioner's right to make a report along the lines contemplated in the draft report. In answer to various motions subsequently filed by the AG and the Access Coordinator, both the requester and the IC moved to have the originating notice of motion struck out as constituting an abuse of process.

The Trial Division allowed the applications to strike out the originating notice of motion on the ground that the issue raised in the applicants' application for judicial review became moot (see MacKay J.'s decision dated September 8, 1997, T-1928-96, reported at [1998] 1 F.C. 337 (T.D.)).

While MacKay J. was not persuaded that the function of the Commissioner, by reason of its ultimate outcome, i.e. a report with non-binding recommendations following an investigation, was beyond the Court's jurisdiction in relation to judicial review, the Court was satisfied that, because of the Minister's decision not to implement the recommendation, the issue raised by this application for judicial review became moot, since the recommendation would not have been followed in any event. According to MacKay J., it is not for the Court to review the appropriateness of the recommendation but, rather, the lawfulness. In this case, because the recommendation was not clearly unreasonable in light of the evidence and materials before the Commissioner, and the minimal standards of fairness applicable were met, there was no reason why the Court would intervene.

This was an appeal by the Access Coordinator from the decision of the Trial Division striking out her application for judicial review.

Decision

The appellant's appeal was dismissed.

Reasons

The Trial Judge did not ignore relevant factors or weighed them so inappropriately as to attract the intervention of this Court.

The finding in the IC's report that the Access Coordinator's involvement in the dismissal of the requester gave rise to a reasonable apprehension of bias on her part does not prejudice her reputation. Indeed, the report specifically rejected the complaints of professional impropriety that the requester had made against her. It was clear for the Court of Appeal that the Coordinator had suffered no injury which the relief she sought could redress, particularly in view of the IC's limited legal power to make non-binding recommendations, which DND in any event rejected.

However, the Court of Appeal added that it did not wish to commit itself to the proposition that there are no circumstances in which the IC may be required by the duty of fairness to afford to those adversely affected by his reports procedural rights over and beyond those expressly prescribed in the *ATIA*.

**INFORMATION COMMISSIONER V. MINISTER OF INDUSTRY
CANADA AND PATRICK MCINTYRE (ADDED PARTY)
INDEXED AS: CANADA (INFORMATION COMMISSIONER) V.
CANADA (MINISTER OF INDUSTRY)**

File No.: T-394-99

References: [2000] F.C.J. No. 47 (F.C.T.D.)

Date of Decision: January 14, 2000

Before: Gibson J. (F.C.T.D.)

Section(s) of *ATIA / PA*: Ss. 21(1)(a), 42(1)(a) and 53
Access to Information Act (ATIA)

Abstract

- Whether percentage weightings assigned to evaluation criteria were “advice” or “recommendations” within meaning of s. 21(1)(a) *ATIA*
- Burden of proof
- Standard of review
- “Advice” or “recommendations” becoming “decision” when adopted by the Minister
- Costs for the Information Commissioner

Issue

Whether the disputed information (i.e., percentage weightings assigned to evaluation criteria) was properly exempted as advice or recommendations under para. 21(1)(a) of the *Access to Information Act (ATIA)*?

Facts

This is an application brought by the Information Commissioner under para. 42(1)(a) *ATIA*. The added party made an *ATIA* request to Industry Canada for information. Certain documents were released but others were exempted. The added party complained to the Information Commissioner who agreed with certain exemptions but disagreed with the respondent's position of refusing to release the percentage weightings assigned to evaluation criteria used to assess certain proposals received by the respondent. The added party agreed to have the Information Commissioner apply for a review of the respondent's refusal to disclose the weightings under para. 21(1)(a) *ATIA*.

The exempted weightings appear on pages that are apparently a hard-copy of slides prepared for a "Ministerial Briefing" held on November 4, 1996. A briefing note forwarded to the respondent, dated November 1, 1996, reflected a clear recommendation that the evaluation criteria to which the weightings related and weightings themselves could be approved at the November 4 meeting. On or about November 4, the evaluation criteria and weightings, as recommended to the respondent, were approved by the latter.

Decision

The application for judicial review was allowed. The Court required the respondent to disclose to the added party the weightings reflected on pages 505 to 510 of the applicant's record.

Reasons

Preliminary Issues

Gibson J. stated that the **onus of proof**, under s. 48, is on the government institution that refuses release of information. He quoted from *Canada (Information Commissioner) v. Canada (Prime Minister)*, [1993] 1 F.C. 427 (T.D.) that "...the heavy onus placed on the party seeking to maintain confidentiality must be satisfied in a formal manner on a balance of probabilities through clear and direct evidence...The jurisprudence indicates that the Government or party seeking to maintain confidentiality must demonstrate its case clearly and directly..." Regarding the standard of review, Gibson J. confirmed the ruling in *Canadian Council of Christian Charities v. Canada (Minister of Finance)*, [1999] F.C.J. No. 771 (QL) (F.C.T.D.) that "...while the Court is required to review the Minister's decisions on a standard of correctness it is certainly appropriate to have regard to the report and recommendations of the Information Commissioner". Gibson J. then added that "...if the head of an institution...is determined to have had a discretion to withhold a document or portions of a document, review of the exercise of discretion to withhold is a separate matter" and referred to the Federal Court decision in *3430901 Canada Inc. v. Canada (Minister of Industry)*, [1999] F.C.J. No. 1859 (QL) (F.C.T.D.) (hereinafter *Telezone*) where the Court ruled that "...in reviewing such a [discretionary] decision the Court should not attempt to exercise the discretion *de novo* but should look at the document in question and the surrounding circumstances and simply consider whether the

discretion appears to have been exercised in good faith and for some reason which is rationally connected to the purpose for which the discretion was granted”.

Main Issue

The Court’s view is that on November 1, 1996, the evaluation criteria and related weightings were in the nature of advice or recommendations to the respondent prepared by officials in his Department and these could be exempted under para. 21(1)(a). But, on or about November 4, 1996, the nature of the evaluation criteria and weightings changed from advice or recommendations to the respondent to decisions of the respondent. As such, the Court was satisfied that they ceased to fall within the ambit of para. 21(1)(a) of the Act and thereafter continued to be outside the ambit of that paragraph at all subsequent times relevant to this matter.

The Court ruled that the weightings do not properly qualify under para. 21(1)(a) for exemption from the right of access. While the Court was satisfied that the weightings originated as “advice” or “recommendations” to the respondent, they lost that character when the respondent accepted the “advice” or “recommendations”. According to Gibson J. when the respondent did so, the weightings became the respondent’s “decisions” and ceased to be “advice” or “recommendations” to him. Gibson J. added *in obiter* that if a separate “record of decision” had been prepared, the Court’s decision with respect to pages 505 to 510, as opposed to the “record of decision” itself, might have been different. However, there was no evidence before the Court of any separate “record of decision”.

The Court distinguished the facts in the *McIntyre* case from the facts in *Telezone* by saying that “In *Telezone*, Madame Justice Sharlow dealt with, among other things, a failure to disclose weightings by the same respondent as in this matter. In the case before her, apparently after discussion with the respondent, ‘...the percentage weightings were changed on the instructions of the Minister to reflect different priorities’. On the facts before Madame Justice Sharlow, the recommendations or advice regarding proposed weightings never acquired the character of ministerial decisions. They never got beyond the stage of being advice or recommendations.”

The Court in the *McIntyre* case said it would have reached the same conclusion on the facts of this matter as in the *Telezone* case had the advice or recommendations regarding weightings not changed character when they were adopted by the respondent as his own decisions. They then ceased to be merely advice or recommendations.

The Court awarded costs to the Commissioner under subs. 53(1) *ATIA* but not to the added party.

Comments

This decision is being appealed.

**INFORMATION COMMISSIONER V. PRESIDENT OF “LES PONTS
JACQUES CARTIER ET CHAMPLAIN INCORPORÉE”
INDEXED AS: CANADA (INFORMATION COMMISSIONER) V.
PONTS JACQUES CARTIER ET CHAMPLAIN INC.**

File No.: T-732-99

References: [2000] F.C.J. No. 121 (QL)
(F.C.T.D.)

Date of Decision: January 26, 2000

Before: Blais J. (F.C.T.D.)

Section(s) of the *ATIA / PA*: Ss. 21(1)(a), (b) and (d), 22 and 42
Access to Information Act (ATIA)

Abstract

- The internal audit report by a private firm is not a “plan” within the meaning of s. 21(1)(d)
- The results of the internal audit are excluded from the application of s. 22
- The federal institution has the burden of establishing the grounds for refusing to disclose the report

Issues

- (1) Did the federal institution err by refusing to disclose the record to the person requesting access under paras. 21(1)(a), (b) and (d) of the *ATIA*? (Yes)
- (2) Did the federal institution err by refusing to disclose the record to the person requesting access under s. 22 of the *ATIA*? (Yes)

- (3) Did the federal institution discharge its burden of establishing in fact and law the grounds for its refusal to disclose the requested report? **(No)**

Facts

The president of the union of employees of “Les Ponts Jacques Cartier et Champlain Incorporée” informally requested a copy of the 1997 internal audit report, prepared by the firm Raymond Chabot Martin Paré (the report), from the respondent. The respondent refused this request.

The president then filed an official request for access with the respondent for this same report. The respondent refused again citing paras. 21(1)(a), (b) and (d) and s. 22 of the *ATIA*.

After receiving a complaint from the union president, the Information Commissioner investigated and found that the complaint was well founded. He recommended that the report be disclosed since subs. 21(2) states that subs. 21(1) does not apply to a report prepared by a consultant. The Commissioner added that s. 22 also did not apply since the request did not involve confidential information dealing with tests or audits. The respondent refused to comply with this recommendation.

With the consent of the requester, the Commissioner filed this application for judicial review under s. 42 of the *ATIA*.

The respondent claims that the report is only a plan as set out in para. 21(1)(d); that the exemption in para. 21(2)(b) does not apply because this exemption only affects paras. 21(1)(a) and (b); that disclosure of the report could compromise the implementation of recommendations it contains contrary to s. 22;

and that the access request was made as part of contract negotiations and that disclosure during negotiations to renew the collective agreement would give the union undue bargaining power.

Decision

The Court allows the application and orders the respondent to disclose the report to the applicant for access within thirty days of the judgment.

Reasons

Issue 1

It is the view of the Court that the report was prepared by a private firm and that this firm completed its work and presented its recommendations in a report. The Court concluded that para. 21(2)(b) applied and specified that the respondent could not refuse to disclose the record based on subs. 21(1).

Issue 2

The report contains the findings of the internal audit. Since the findings are excluded from the application of s. 22, the respondent cannot refuse to disclose the report based on this section.

Issue 3

The Court, basing its decision on *Canadian Council of Christian Charities v. Canada (Minister of Finance)* ([1999] F.C.J.

No. 983 (QL) (F.C.T.D.), T-2144-97, order dated May 19, 1999), concluded that the respondent did not succeed in demonstrating that the exemptions provided in the Act applied.

Comments

(1) The Court dismissed outright the respondent's numerous reasons that it would suffer irreparable harm, considering that it was, and had been for many years, in negotiations with its employees and that this access to information request was only part of the union's negotiation strategy.

(2) The Court wrote:

[translation] “ ... the Court does not have to rule on the reasons that someone may file a legitimate access to information request; however, since the topic has come up, the Court wonders rather whether the refusal to disclose the record in accordance with the Act is not part of the employer's negotiation strategy.”

**IN THE MATTER OF THE *Privacy Act* AND
SECTION 108 OF THE *Customs Act*
INDEXED AS: *Privacy Act (CAN.) (RE)***

File No.: A-121-99

References: [2000] F.C.J. No. 179 (QL) (F.C.A.)

Date of Decision: February 9, 2000

Before: Décary, Sexton and Evans JJ. A
(F.C.A.)

Section(s) of ATIA / PA: S. 8(2)(b) *Privacy Act (PA)*

Abstract

- Disclosure of information on Customs Traveller Declaration Card to Canada Employment Insurance Commission
- Purpose: to identify claimants in receipt of employment insurance benefits during unreported absences from Canada
- Question of validity of disclosure under s. 8(2)(b) *Privacy Act* and s. 108(1)(b) *Customs Act*
- Construction of statutes
- Datamatch and s. 8(2)(b) of the *Privacy Act*
- Exercise of ministerial discretion under s. 108(1)(b) *Customs Act*

Issue

Whether the disclosure of personal information by Revenue Canada (Customs) to the Canada Employment Insurance

Commission was authorized by the *Customs Act* and the *Privacy Act*?

Facts

This is an appeal from an opinion of the Trial Division ([1999] 2 F.C. 543 (T.D.)). At issue in the Court below was an application by way of special case stated pursuant to para. 17(3)(b) of the *Federal Court Act*.

The question put to the Court was the following one:

Is the disclosure of personal information by the Department of National Revenue to the Canada Employment Insurance Commission pursuant to the Ancillary Memorandum of Understanding for data capture and release of customs information on travellers authorized by s. 8 of the *Privacy Act* and s. 108 of the *Customs Act*?

Recipients of benefits under the *Employment Insurance Act* have an obligation, while receiving benefits, to search for work at all times while claiming benefits and to report any absences from Canada immediately. The Canada Employment Insurance Commission (the "Commission") and Customs Canada undertook a datamatch program to identify employment insurance claimants who fail to report they were outside Canada while receiving benefits, and to recover any resulting overpayments and, where appropriate, to impose penalties. Customs agreed to disclose to the Commission certain information contained on the Traveller Declaration Card (the E-311 Card) which would be used solely for the purposes of the *Employment Insurance Act*. Customs concluded that the

information could be released to the Commission under para. 108(1)(b) of the *Customs Act*, without offending the *Privacy Act*. The disclosure to the Commission was done pursuant to an “Ancillary Memorandum of Understanding for data capture and release of customs information” entered into on April 26, 1997 by the Department of National Revenue and the Canada Employment Insurance Commission. This Ancillary Memorandum supplemented an existing Memorandum between the two parties entered into in 1995, replacing a revised Agreement made in 1992 pursuant to an authorization issued by the Minister of National Revenue in 1991 under para. 108(1)(b) of the *Customs Act*. That authorization allows for the disclosure of information obtained for the purpose of the *Customs Act* when, *inter alia*, the information is required for the administration or enforcement of a law of Canada or of a province.

The information made available by Customs consists of the traveller’s name, date of birth, postal code, purpose of travel and dates of departure from and return to Canada.

The Commission conducts the match by comparing both sources of information to produce what is commonly referred to as “hits” – names of persons who appear as out of the country and are receiving employment insurance benefits. The Commission then undertakes a number of further steps to identify claimants who received employment insurance benefits during unreported absences from Canada. Those claimants are then contacted and asked to provide information or an explanation in respect of the evidence that they had received employment insurance benefits during an unreported absence from Canada.

Decision

The appeal was allowed.

The disclosure of personal information by the Department of National Revenue to the Canada Employment Insurance Commission pursuant to the Ancillary Memorandum of Understanding for data capture and release of customs information on travellers is authorized by s. 8 of the *Privacy Act* and s. 108 of the *Customs Act*.

Reasons

The Trial Division Judge erred by referring to the 1991 Ministerial Authorization and not to the 1997 Ancillary Memorandum. The Ancillary Memorandum constitutes an authorization independent from the 1991 Authorization. The fact that the Ancillary Memorandum was signed by the Deputy Minister of Revenue Canada and not by the Minister does not affect its validity under para. 108(1)(b) of the *Customs Act* which requires an authorization to be given by the Minister. Under para. 24(2)(c) of the *Interpretation Act* a Deputy Minister can act on behalf of his Minister.

The word “information” in subs. 108(1) of the *Customs Act* is to be given its plain, general and encompassing meaning which includes “personal information”. As such, an authorization to disclose personal information under para. 108(1)(b) of the *Customs Act* comes within para. 8(2)(b) of the *Privacy Act*.

The Court rejected the Privacy Commissioner’s argument that Parliament intended for para. 8(2)(b), when read in the context

of the entire Act and particularly in light of s. 7, to limit the disclosure of personal information to the purpose for which the information was collected or for a use consistent with that purpose. This provision enables Parliament to confer to any Minister (for example) through a given statute a wide discretion, both as to form and substance, with respect to the disclosure of information his department has collected, such discretion, of course, to be exercised in conformity with the purpose of the *Privacy Act*. The Court was satisfied that the Minister of National Revenue had taken into consideration the objectives of the *Privacy Act* in the 1997 Ancillary Memorandum and the 1995 Memorandum of Understanding, as these documents restricted the Canada Employment Insurance Commission's use of the information and put in place sufficient safeguards to protect the information. The Minister had also satisfied herself that this disclosure was for a permissible use and that no more than the information needed would be disclosed. The Court expressed no views as to the validity of the 1991 Ministerial Authorization.

Comments

Leave to appeal to the Supreme Court of Canada has been granted (August 17, 2000).

O'SULLIVAN V. MINISTER OF ENVIRONMENT CANADA
INDEXED AS: O'SULLIVAN V. CANADA
(MINISTER OF ENVIRONMENT)

File No.: T-530-96

References: [2000] F.C.J. No. 305 (QL)
(F.C.T.D.)

Date of Decision: March 7, 2000

Before: Lafrenière (Prothonotary)

Section(s) of *ATIA* / *PA*: S. 41 *Access to Information Act*
(*ATIA*)

Abstract

- Extension of time to file applicant's record refused
- Justice requiring that applicant be held to strict time limits imposed by Court
- Unforeseen circumstances not established

Issue

Whether the applicant's motion for an extension to file the applicant's record can be granted.

Facts

This is a motion by the applicant for an extension of time to serve and file the applicant's record. The application for review pursuant to s. 41 *ATIA* was brought on March 5, 1996. The applicant, who was unrepresented at the time, was advised

almost immediately by the respondent that the proceeding was untimely and that an extension of time to bring the application would have to be sought from the Court. No procedural steps were taken by the applicant (except in the form of a letter to the Registry seeking directions) until the issuance of a notice of status review on March 4, 1999. On May 3, 1999, Giles P. ordered the applicant to bring a motion to extend the time for bringing the s. 41 application and directed the application of the time limits set out in Rules 306 to 314. A motion to extend the time was filed by the applicant on July 5, 1999. On July 6, 1999, Evans J. granted the extension of time and ordered that the judicial review proceed in accordance with the following schedule: the applicant was to file any supplementary affidavit evidence within 30 days of the order and the time limits set out in the *Federal Court Rules* were to apply. The applicant did not file any supplementary affidavit evidence. On January 5, 2000, the applicant requested that a case management conference be scheduled. During the case management conference held on February 1, 2000, the applicant made an oral motion for an extension of time to file his factum. The applicant was ordered to bring a motion for extension no later than February 14, 2000.

Decision

The motion for extension of time to file the applicant's record was dismissed.

Reasons

Parties to a proceeding are expected to comply with the time periods set out in the *Federal Court Rules* unless they can

satisfy the Court than an extension of time is warranted. Moreover, a defaulting party must be held to a higher standard when seeking an extension of a deadline imposed after their proceeding has survived status review.

The explanation provided by the applicant for the delay is wholly unsatisfactory.

The requirement on the respondent under Rule 310 to file the respondent's record is contingent on service of the applicant's record. Given the applicant's non-compliance, the respondent's obligation was never triggered.

The overriding principle in applications for extension of time is that justice be done. In the present case, justice requires that the applicant be held to the strict time limits imposed by the Court absent unforeseen circumstances, which have not been established. The decision of Reed J. in *Chin v. Canada (Minister of Employment and Immigration)* (1993), 69 F.T.R. 77 (F.C.T.D.) was relied upon.

**PRIVACY COMMISSIONER OF CANADA V.
CANADA LABOUR RELATIONS BOARD
INDEXED AS: CANADA (PRIVACY COMMISSIONER) V.
CANADA (LABOUR RELATIONS BOARD)**

File No.: A-685-96

References: [2000] F.C.J. No. 617 (QL) (F.C.A.)

Date of Decision : May 9, 2000

Before: Desjardins, Rothstein and Evans
J.J.A. (F.C.A.)

Section(s) of ATIA / PA : S. 12(1)(b) *Privacy Act (PA)*

Abstract

- Notes of members of the Canada Labour Relations Board (CLRB)
- “Under the control” of the CLRB
- “Judicial independence” and “adjudicative privilege”
- Evidence of non-control over the notes in the *Canada Labour Code*
- Regulation-making powers of the CLRB
- Costs

Issue

Are notes of CLRB members “under the control” of the CLRB?

Facts

This is an appeal from the Trial Division decision ([1996] 3 F.C. 609 (T.D.)) of the refusal by the Canada Labour Relations Board (CLRB) to disclose to the Privacy Commissioner of Canada notes taken by members of the CLRB during the hearing of a complaint.

The Trial Judge made a detailed analysis of the provisions of both the *Privacy Act (PA)* and the *Access to Information Act (ATIA)* together with a consideration of the principle that adjudicative decision makers, whether judges or members of administrative tribunals, should be free to hear and decide the cases before them independently without any improper influence from others. The Trial Division Judge also considered the corollary principle that the decision-making processes of these decision makers should be similarly free from any intrusion. He indicated that both principles, the first termed “judicial independence” (for courts of law) and the second termed “adjudicative privilege” (for administrative tribunals), were imported into the sphere of administrative decision making through the common law duty of fairness. Since administrative tribunals are bound by the duty of fairness, then their members must, like judges, be shielded against any type of intrusion into their thought processes beyond what is revealed by their reasons.

The Trial Judge concluded that the request by the Commissioner was contrary to para. 22(1)(b) of the *PA* because the disclosure of the Board members’ notes “could reasonably be expected to be injurious to the enforcement of any law in Canada”. Such request, he said, would interfere

with the independence and intellectual freedom of quasi-judicial decision makers acting under the *Canada Labour Code*. It would reveal, he said, their personal decision-making processes and might cause them to alter the manner in which they arrive at decisions. The Trial Judge also concluded that the notes were not “personal information” and that they were not “under the control” of the Board, as found in para. 12(1)(b) *PA*.

Decision

The appeal is dismissed because the notes are not under the control of a government institution.

Costs were judged in favour of the respondent in a sum of \$15,000 inclusive of disbursements.

Reasons

The F.C.A. ruled that while the notes taken by the Board members may or may not amount to “personal information”, these notes are not “under the control” of the CLRB as provided in para. 12(1)(b) *PA*. The notes are being taken during the course of quasi-judicial proceedings, not by employees of the Board, but by Governor in Council appointees endowed with adjudicative functions which they must perform, not as agents of the Board, but independently of other members of the Board including the Chairperson of the Board or a government institution. Their notes are not part of the official records of the Board and are not contained in any other record keeping system over which the Board has control.

The F.C.A. agreed with the Trial Judge who made the following statement (at pp. 696-697):

It is clear that there is no requirement either in the *Canada Labour Code*, or in the CLRB policy or procedure touching upon the notes. The notes are viewed by their authors as their own. The CLRB members are free to take notes as and when they see fit, and indeed may simply choose not to do so. The notes are intended for the eyes of the author only. No other person is allowed to see, read or use the notes, and there is a clear expectation on the part of the author that no other person will see the notes. The members maintain responsibility for the care and safe keeping of the notes and can destroy them at any time. Finally, the notes are not part of the official records of the CLRB and are not contained in any other record keeping system over which the CLRB has administrative control.

In my view, it is apparent from the foregoing that however broadly one construes the word control, the notes in issue were not “under the control” of the CLRB within any of the meanings that can be attributed to that term. Not only are the notes outside the control or custody of the CLRB but they are also considered by the CLRB to fall outside the ambit of its functions.

The Court of Appeal agreed with the Trial Judge’s conclusion that, by means of the regulation-making powers in paras. 15(a) and (q) of the *Canada Labour Code*, the Board could not exercise such control over these notes as to bring them

“under the control of a government institution” within the meaning of para. 12(1)(b) *PA*. A regulation that, for instance, requires members to take notes, prescribes the form of such notes or requires that they be deposited with the Board, would be invalid as a breach of the aspect of the duty of fairness respecting the independence of adjudicative decision makers. The principle of judicial independence and its corollary, the principle of adjudicative privilege, as applied to administrative tribunals, lie at the heart of the Board’s lack of control over the notes as a government institution.

Counsel for the appellant had suggested that, because the notes were under the control of members who made them, and because decisions of panels are decisions of the Board, the notes are therefore under the control of the Board. The F.C.A. disagreed with this reasoning saying that it ignores the independence of the members of their adjudicative capacity.

Costs were ruled in favour of the respondent in a sum of \$15,000 inclusive of disbursements.

**STENO TRAN SERVICES V. MINISTER OF PUBLIC WORKS
AND GOVERNMENT SERVICES CANADA
INDEXED AS: STENO TRAN SERVICES V. CANADA
(MINISTER OF PUBLIC WORKS AND GOVERNMENT SERVICES)**

File No.: T-1281-99

References: [2000] F.C.J. No. 747 (QL)
(F.C.T.D.)

Date of Decision: May 31, 2000

Before: Heneghan J. (F.C.T.D.)

Section(s) of *ATIA* / *PA*: Ss. 20(1)(b) and 44 *Access to
Information Act (ATIA)*

Abstract

- “Unit prices information” and para. 20(1)(b) *ATIA*
- Meaning of “confidential” in para. 20(1)(b)
- “Confidentiality clause” in Standing Offer
- “Disclosure clause” in Standing Offer and Confidentiality

Issue

Whether the “unit prices” information which the Minister proposes to release is exempt under para. 20(1)(b) *ATIA*?

Facts

This is a s. 44 *ATIA* application to review the Minister’s decision to release information regarding the pricing offered by

StenoTran Services, a contractor who was awarded a contract for reporting services.

In February 1999, Public Works invited bids for a contract involving court reporting at the Competition Tribunal. Bidding companies were required to provide quotes for pricing and the résumés of the reporters. The applicant was awarded the contract on the basis that it had the lowest unit prices.

In March 1999, the Minister received a request under the *Access to Information Act* to disclose the unit prices and associated documentation of the contractor who was awarded the Competition Tribunal contract. Following the request, the Minister informed the applicant that it would disclose the unit prices. The applicant objected to the release and in response to this objection, the applicant was informed that certain portions of the material would be exempted but that the unit prices would be released.

The Minister agrees that the material is “commercial” and was supplied by the applicant to a government institution. However, the Minister disagrees with the applicant on the issue of confidentiality. The Minister submits that the information is not confidential and was not treated in a confidential manner by the applicant.

Decision

In light of the fact that the applicant bears the burden of proving that the information should not be disclosed and that the disclosure clause in the Standing Offer is not compatible with the notion that “unit prices” information is objectively

“confidential”, as required under para. 20(1)(b), the application for judicial review was dismissed.

Reasons

The Court ruled that the applicant bears the burden of proving that the information should not be disclosed. Justice Heneghan referred to *Air Atonabee Limited v. Canada (Minister of Transport)* (1989), 27 C.P.R. (3d) 180 (F.C.T.D.) where Justice MacKay established the criteria governing whether information will be considered “confidential”. Justice MacKay stressed that it is an objective standard which must be applied in making the determination of whether something is confidential:

The second requirement under s. 20(1)(b), that the information be confidential, has been dealt with in a number of decisions. These establish that the information must be confidential in its nature by some objective standard which takes account of the content of information, its purposes and the conditions under which it was prepared and communicated...It is not sufficient that the third party state, without further evidence, that it is confidential...Information has not been held to be confidential, even if the third party considered it so, where it has been available to the public from some other source...or where it has been available at an earlier time or in another form from government. Information is not confidential where it could be obtained by observation albeit with more effort by the requestor... It is not sufficient that [the applicant] considered the information to be confidential. It must also have been kept confidential by both parties and...must not have

been otherwise disclosed or available from sources to which the public has access.

The Court referred to the following explanations by Jerome A.C.J. in the *Montana Band* decision (*Montana Band of Indians v. Canada (Minister of Indian and Northern Affairs)*, [1989] 1 F.C. 143 (T.D.)) that whether information is confidential will depend upon its content, its purposes and the circumstances in which it is compiled and communicated, namely:

- (a) that the content of the record be such that the information it contains is not available from sources otherwise accessible by the public or that could not be obtained by observation or independent study by a member of the public acting on his own,
- (b) that the information originate and be communicated in a reasonable expectation of confidence that it will not be disclosed, and
- (c) that the information be communicated, whether required by law or supplied gratuitously, in a relationship between government and the party supplying it that is either a fiduciary relationship or one that is not contrary to the public interest, and which relationship will be fostered for public benefit by confidential communication.

Furthermore, Justice Heneghan referred to *Société Gamma Inc. v. Canada (Department of the Secretary of State)* (1994), 56 C.P.R. (3d) 58 (F.C.T.D.) where Justice Strayer decided an

access to information case surrounding the disclosure of a “proposal format” which arose following a competition for translation services:

After a careful review of the expurgated versions of the proposals which the respondent is prepared to disclose, I am unable to conclude that what remains is confidential. As has been well established, whether information is confidential must be decided objectively...I do not believe that the material from the applicant’s proposals which the respondent intends to disclose can be regarded as confidential by its intrinsic nature. In the first place the format of the proposals, to which the applicant attaches such importance, is really...a simple rendition of the items listed in the “*grille d’évaluation*”, one of the documents distributed by the government as part of its request for proposals. As for the information provided within that format, some of it is clearly material already in the public domain such as the judgments of court included as samples of the applicant’s work. General information about the applicant and the nature and quality of its work not otherwise exempted appears to me to be of a nature not inherently confidential. One must keep in mind that these proposals are put together for the purpose of obtaining a government contract, with payment to come from public funds. While there may be much to be said for proposals or tenders being treated as confidential until a contract is granted, once the contract is either granted or withheld there would not, except in special cases, appear to be a need for keeping tenders secret. In other words, when a

would-be contractor sets out to win a government contract he should not expect that the terms upon which he is prepared to contract, including the capacities his firm brings to the task, are to be kept fully insulated from the disclosure obligations of the Government of Canada as part of its accountability. The onus... is always on the person claiming an exemption from disclosure to show that the material in question comes within one of the criteria of s. 20(1)...

On the issue of whether a confidentiality clause (“Should the Bidder provide the requested information to Canada in confidence while indicating that the disclosed information is confidential, then Canada will treat the information in a confidential manner as provided in the *ATIA*”) guaranteed that the information in the bid would be considered confidential under the *ATIA* if the bidder identified the information as confidential, the Court ruled that this confidentiality clause only ensures that the information will be treated as confidential pursuant to the provisions found in the Act.

On the issue of whether the Standing Offer contains a disclosure clause (“The Offeror agrees to the disclosure of its standing offer unit prices by Canada, and further agrees that it shall have no right to claim against Canada, the Minister, the Identified User, their employees, agents or servants, or any of them, in relation to such disclosure”) which limits disclosure to other government departments, the Court did not accept that this clause applies only to other government bodies.

**RUBY V. SOLICITOR GENERAL;
RUBY V. ROYAL CANADIAN MOUNTED POLICE
AND DEPARTMENT OF EXTERNAL AFFAIRS
INDEXED AS: RUBY V. CANADA
(ROYAL CANADIAN MOUNTED POLICE)**

File Nos.:	A-52-98 (RCMP), A-872-97 (DEA), A-873-97 (CSIS)
References:	[2000] F.C.J. No. 779 (QL) (F.C.A.)
Date of Decision:	June 8, 2000
Before:	Létourneau, Robertson and Sexton JJ.A. (F.C.A.)
Section(s) of ATIA / PA:	Ss. 16(2), 19, 22(1)(a) and (b), 26, 51 <i>Privacy Act (PA)</i>
Other statutes:	Ss. 1, 2(b), 7 and 8 <i>Canadian Charter of Rights and Freedoms</i>

Abstract

- *Privacy Act* requests to the RCMP, the DEA and to CSIS
- Burden of proof exemptions properly claimed and applied
- Evidence necessary to prove that discretion exercised properly
- Mandatory nature of *PA's ex parte* and *in camera* provisions and the *Charter*

Issues

- (1) Who has the burden of proving that the exemptions were properly claimed and applied?
- (2) What evidence is required to prove that the discretion under these exemptions was properly exercised?
- (3) Is the policy of refusing to confirm, or deny, under s. 16 *PA*, the existence of personal information a fettering of discretion?
- (4) Whether the reviewing Judge fettered his discretion in receiving *ex parte* representations pursuant to s. 46?
- (5) Whether the Trial Judge erred in refusing to admit the expert evidence of Mr. Copeland?
- (6) Whether the mandatory *ex parte* and in camera provisions of the *PA* contravene ss. 2(b), 7 and/or 8 of the *Charter* and, if so, whether they are saved by s. 1 *Charter*?

Facts

These are three appeals which were heard together. They call for a review of the exercise of discretion by the judge of the Trial Division ([1998] 2 F.C. 351 (T.D.)), an interpretation of the scope of the exemptions, including the burden of proof in respect thereof, relied upon by these three federal institutions to deny access to the appellant, as well as a determination with respect to the constitutional validity of certain provisions of s. 51 *PA*.

The appellant contends that the procedure in s. 51 violates para. 2(b) (freedom of the press), s. 7 (right to security of the person) and s. 8 (right to protection against unreasonable searches and seizures) of the *Canadian Charter of Rights and Freedoms*.

The appellant was refused access to personal information banks maintained by CSIS, DEA and the RCMP.

The appellant applied to the RCMP for access to “all information about [himself] in Toronto and Ottawa” in personal information bank 005 and was refused access. He was informed that no records were located in Ottawa and that the records located in Toronto were exempt from disclosure under subpara. 22(1)(a)(ii) and s. 27 *PA*. Mr. Ruby complained to the Privacy Commissioner who upheld the RCMP refusal. Mr. Ruby then filed a s. 41 review of the refusal.

The first request was for access to bank CMP PPU 005 (bank 005) (operational case records) concerning an investigation of a possible breach of the *Official Secrets Act*. The only RCMP document still in issue before the Trial Division and the FCA was a “Letter, dated Mar. 29, 1978 from Department of Justice to Officer in Charge, Criminal Operation, “O” Division regarding advice re. Possible investigations”.

In a second request, Mr. Ruby sought access to bank DEA PPU 040 (bank 040) maintained by the DEA (as the DFAIT was then known). The appellant was told by letter that, pursuant to s. 16 *PA*, the DEA would neither confirm nor deny the existence of the information requested, but, if it did exist, the information would reasonably be considered exempt from

disclosure under paras. 22(1)(a) and (b) *PA*. It was the DEA policy to never disclose information in bank 040 in order to prevent attempts by applicants systematically making requests and trying to discern from the pattern of answers the kind of information the DEA possessed. Mr. Ruby complained to the Privacy Commissioner who concluded that the DEA position was reasonable, in that either to confirm or deny the existence of information may be injurious to the conduct of lawful investigations.

Finally, a third request, which was refused by the Solicitor General was for access to personal information bank SIS PPU 010 (bank 010) maintained by CSIS. The information in that bank was described as pertaining to sensitive and current operations involving individuals whose activities may, on reasonable grounds, be suspected of being detrimental to the interests of Canada (e.g., espionage or sabotage). CSIS refused to confirm or to deny the existence of the information requested. It added that, if the information did exist, it would be exempt from disclosure pursuant to ss. 19, 21, 22 and 26 *PA*. CSIS did provide some information, but not all, that the Privacy Commissioner considered should be released, from a second information bank (bank 015) containing older information generally of a similar nature to that in bank 010. The Privacy Commissioner concluded that CSIS's refusal to confirm or deny the existence of personal information within bank 010 was within the requirements of subs. 16(2) *PA*. Some information was later released to the appellant but not all.

The three banks were established pursuant to s. 10 *PA*.

Decision

The application for judicial review based on *Charter* arguments was dismissed because para. 51(2)(a) and subs. 51(3) of the *Privacy Act* do not engage s. 7 *Charter*.

The application for judicial review based on the exercise of discretion was partly accepted regarding the Department of External Affairs (DEA) and CSIS. The matter was referred back to the Trial Division for a new determination, in accordance with these reasons, of whether the exemptions claimed pursuant to s. 19, para. 22(1)(b) and s. 26 *PA* with respect to banks 010 and 015 were properly applied by CSIS, and whether the DEA properly applied with respect to bank 040 the exemptions it claimed pursuant to paras. 22(1)(a) and (b) *PA*.

The Court ordered that the affidavit of Mr. Paul Copeland and the transcript of his cross-examination, if any, be filed in evidence and that they be considered in assessing whether these exemptions were properly applied by CSIS and the DEA.

Reasons

(1) Burden of proving that the exemptions were properly claimed and applied

Under s. 47 *PA*, the burden is on the head of a government institution to establish that it is authorized to refuse to disclose the personal information requested. This burden encompasses both the burden of proving that the conditions of the exemptions are met and that the discretion conferred to the head of a government institution was properly exercised.

Where accessibility to personal information is the rule and confidentiality the exception, where an applicant has no knowledge of the personal information withheld, no access to the record before the court and no adequate means of verifying how the discretion to refuse disclosure was exercised by the authorities, and where s. 47 of the Act clearly puts on the head of a government institution the burden of establishing that it was authorized to refuse to disclose the personal information requested and, therefore, that it properly exercised its discretion in respect of a specific exemption it invoked, then an applicant cannot be made to assume an evidential burden of proof.

The FCA quoted from *Rubin v. Canada (Canada Mortgage and Housing Corp.)* ([1989] 1 F.C. 265 (C.A.)) regarding s. 47 of the *Privacy Act (PA)* where it was said that:

This section places the onus of proving an exemption squarely upon the government institution which claims that exemption. The general rule is disclosure, the exception is exemption and the onus of proving the entitlement to the benefit of the exception rests upon those who claim it.

The FCA stated that it is the Court's function, on an application for review under s. 41 of the Act, to ensure that the discretion given to the administrative authorities "has been exercised within proper limits and on proper principles". This is why the reviewing Court is given access to the material in issue by s. 45 of the Act. In the Court's view, an applicant who, pursuant to s. 41, applies for judicial review of an institution's refusal to disclose the personal information requested, by definition,

questions the validity of the exercise of discretion by that institution and nothing more is required from him or her. In such circumstances, this is the best an applicant can do. This is the most an applicant should be held to.

(2) Evidence required to prove that discretion under the exemptions was properly exercised

- **Exemptions claimed by the RCMP regarding bank 005 (subpara. 22(1)(a)(ii) and s. 27)**

Only one document remains in issue in bank 005. The exemptions applied were subpara. 22(1)(a)(ii) and s. 27.

Subparagraph. 22(1)(a)(ii) is a law enforcement exemption whereby information obtained by an investigative body in the course of lawful investigations pertaining to the enforcement of any law of Canada or a province may be exempt from disclosure. However, para. 22(1)(a) only permits the head of an institution to refuse to disclose any personal information requested under subs. 12(1) where the information came into existence less than 20 years prior to the request. In the case at bar, 20 years or more have thus elapsed. This subparagraph is, therefore, no longer a valid ground for refusal to disclose.

The appellant submits that the judge erred in failing to put the onus of proof on the RCMP to show that it exercised, under s. 27 *PA*, its discretion to decide whether to disclose the information. The appellant claimed that it was not sufficient that the government classifies the information within the class of solicitor-client privileged documents, the RCMP must still exercise its discretion whether to disclose the document containing it because s. 27 is merely discretionary.

The Trial Division Judge was satisfied that the refusal to disclose the document was based on s. 27 *PA* and that the RCMP had exercised its discretion not to disclose. He also found that the information contained in the document was properly classified within s. 27. The FCA said it was satisfied that the Trial Judge made no error in concluding as he did.

- **Exemptions claimed by the DEA regarding bank 040 (subs. 16(2) and paras. 22(1)(a) and (b))***

The appellant submits that the reviewing judge misunderstood his role with respect to the law enforcement exemption invoked by the DEA pursuant to para. 22(1)(a). He contends that the judge limited his review to assessing whether the documents fell within the class enumerated in that paragraph and failed to review the exercise of the DEA's discretion not to grant the requested access.

The FCA ruled that a new review of the material denied to the appellant should be conducted with respect to the law enforcement exemption (para. 22(1)(a)) to determine whether the DEA properly exercised its discretion in refusing access to the appellant.

The FCA stated that para. 22(1)(b) of the Act does not authorize a refusal to disclose simply because disclosure could have a chilling effect on the investigative process in general. The notion of injury in para. 22(1)(b) does not extend beyond injury to a specified investigation, either actual or to be undertaken. A new review of the material denied should be conducted accordingly.

* *The exemption under subs. 16(2) is dealt with in issue no. 3.*

- Exemptions claimed by CSIS regarding banks 010 and 015
 - a) Paragraph 22(1)(b) *PA* exemption

The Court ruled that, in view of their conclusion that the para. 22(1)(b) exemption was not correctly applied, the information in banks 010 and 015 should be reviewed anew with a view to identifying which information, if any, is not covered by that exemption. Unless otherwise protected by another exemption, that information should then be released pursuant to s. 49 of the Act, subject to such conditions or order as the Court deems appropriate.

The Trial Judge concluded that “the Court cannot substitute its views for that of CSIS, or the Solicitor General, about the assessment of the reasonable expectation of probable injury”. The FCA ruled that it is very much part of the Court’s role under s. 49 to determine the reasonableness of the grounds on which disclosure was refused by CSIS. That being the case, the Trial Judge, in the FCA’s view, should have scrutinized more closely whether the release of information, particularly information that is over 20 years old, could reasonably be expected to be injurious to specific efforts at law enforcement and detection of hostile activities, and, therefore, whether CSIS had a reasonable ground to refuse to disclose.

b) Section 19 *PA* exemption

The FCA ruled that the respondent’s claim under s. 19 *PA* to a valid exemption from disclosure of the personal information requested by the appellant in banks 010 and 015 should be

reviewed in accordance with the FCA's interpretation of subs. 19(2). This means that the Trial Judge ought to ensure that CSIS has made reasonable efforts to seek the consent of the third party who provided the requested information. If need be, a reasonable period of time should be given by the reviewing judge to CSIS to comply with the consent requirement of para. 19(2)(a).

c) Section 26 PA exemption

The FCA agreed with the following ruling by the Trial Judge:

I agree with counsel for the respondents that s. 26 also sets a mandatory exemption, unless the information concerning another individual may be released in the circumstances provided by subs. 8(2) PA. For the applicant, it is submitted that a proper exercise of discretion to release information about another individual requires the head of the institution concerned to consider para. (m) of subs. 8(2) and to form an opinion whether the public interest in disclosure clearly outweighs any invasion of privacy that could result from disclosure. Again, in my opinion, this submission ignores the emphasis of s. 8 as a whole, that is, not to disclose information about other persons to one who makes a request under the Act, unless there be an exceptional ground as set out by subs. 8(2). I am not persuaded that every reference to another individual must be considered in relation to para. (m) of that provision before the head of the institution refuses to disclose it.

The Trial Judge's conclusion on the scope of the s. 26 exemption can be read in two ways. According to one, the Judge appears to have been of the view that the s. 26 exemption could be relied upon simply by asserting that the primary thrust of s. 8 is non-disclosure, so that none of the enumerated exceptions in subs. 8(2) have to be considered. This, in the FCA's view, would be an error because it would mean that s. 8 in practice turns s. 26 into a bar against disclosure in every circumstance. It would amount to giving license to the head of a government institution to ignore the express words of s. 26, which dictate that such an official has no discretion to disclose if s. 8 applies: the official "may" refuse to disclose third party information, but "shall" refuse disclosure if the information is protected by s. 8. Clearly, Parliament intended that the head of a government institution consider and apply s. 8 in some manner when using the s. 26 exemption.

The FCA agreed with the Trial Judge that the balancing in subpara. 8(2)(m)(i) does not have to be done in reference to every piece of information concerning every party to whom the information relates. Some kind of weighing of public interest must take place, but the manner in which to conduct the weighing of interests is within the discretion of the head of the government institution. Furthermore, the purpose for which discretion was granted under subpara. 8(2)(m)(i) illuminates how that discretion may be sensibly and responsibly exercised, said the FCA. The purpose of the grant of the discretion involves protection of the interest of the citizens of Canada in privacy.

The FCA's view was that the privacy interest in this subparagraph is capable of varying degrees of abstraction. Sometimes the comparison of a general category like the public interest with the interest in privacy will require that the latter be conceived in general terms. The FCA said that the two ways of conceiving privacy create some flexibility in the manner of exercising discretion under subpara. 8(2)(m)(i). Generally, the most obvious way for the institution head to exercise his or her discretion will be by inquiring into the impact of disclosure upon the privacy of those individual third parties specifically named in the requested information. At other times, it might be appropriate to deal with the privacy interest at a more abstract level so as to weigh it against the public's interest in disclosure. The latter approach may at times be an equally valid exercise of the broad discretion conferred upon the head of a government institution. The extent to which the privacy interest ought to be considered in a more or less specific form will depend largely on the facts surrounding each request.

The FCA was not able to ascertain from the decision of the reviewing judge whether in fact CSIS conducted any kind of discretionary balancing of public interest and privacy under subpara. 8(2)(m)(i) and it therefore ordered that there be a new review of the personal information requested in banks 010 and 015 for the purpose of determining whether the exemption in s. 26 of the Act has been properly applied by CSIS.

(3) Is the policy of always refusing to confirm or deny the existence of personal information by virtue of s. 16 PA a fettering of discretion?

The appellant challenged DEA's policy of never disclosing whether personal information exists concerning an applicant in bank 040. He submits that this general policy is a refusal to exercise discretion on a case-by-case basis and hence is a violation of subs. 16(2), in other words, it is a fettering by the DEA of its discretion. Furthermore, he contends that this policy of blanket refusal has the effect of *de facto* transforming bank 040 into an exempt bank without following the strict procedure established by s. 18 *PA* for the creation of an exempt bank.

The FCA said that subs. 16(2) cannot be read as creating a duty to consider whether each and every request should call forth a decision on whether to confirm or deny the existence of requested information: the "may" in the provision, which has been omitted in the French version of the text, merely attests to the fact that the institution head is empowered to choose among the options in subs. 16(1). Alternatively, if the "may" is to be read as creating a duty to exercise discretion, that duty was, in the FCA's view, appropriately discharged in the circumstances.

The FCA rejected the appellant's second argument that the approach taken by the DEA with respect to subs. 16(2) *de facto* creates an exempt bank. The FCA said that even with the systematic refusal to confirm or deny the existence of personal information in bank 040, the DEA must, pursuant to para. 16(1)(b), indicate the specific provision of the Act on which the refusal to disclose information could reasonably be based if the information existed and if the existence of that information had been confirmed. There is no such requirement with an exempt bank which contains files which consists predominantly of personal information described in s. 21 or 22

of the Act. Moreover, the banks to which subs. 16(2) applies are not as limited as regards content as exempt banks are. They may contain personal information of any sort, not just those described in ss. 21 and 22. Finally, the FCA said that, while judicial review of exempt banks can only be initiated by the Commissioner pursuant to s. 43 *PA*, a complainant retains his right under s. 41 to apply for judicial review with respect to any other bank than an exempt bank.

The FCA found the appellant's arguments regarding subs. 16(2) to be without merit.

(4) Whether the reviewing Judge fettered his discretion in receiving *ex parte* representations pursuant to s. 46 of the *PA*?

The FCA said that because of the Court's duty to look into whether the refusal to disclose is justified, he was of the view that it is sound practice for the Court to receive *ex parte* submissions in proceedings which contest such refusal. Such evidence assists the judge in his review and helps to ensure that confidential or secret information is not disclosed to the public or the applicant when an exemption from disclosure is justified. As it appears from his decision, the reviewing judge was of the opinion that *ex parte* submissions are an effective compromise solution which makes sense generally. The fact that this solution makes sense generally, in the view of the FCA, does not mean that the Trial judge fettered or improperly exercised his discretion to accept such evidence in this particular instance. The Court of Appeal dismissed this ground of appeal.

(5) Whether the Trial Judge erred in refusing to admit the expert evidence of Mr. Copeland?

The FCA concluded that Mr. Copeland's public affidavit meets the criteria set down by the Supreme Court of Canada in *R. v. Mohan* ([1994] 2 S.C.R. 9) and that it should have been admitted for the purpose of the judicial review. The Court of Appeal said that there is no doubt that the affidavit satisfies both the logical and legal relevancy test in that its value outweighs its impact on the process, i.e., its prejudicial effect. In order to satisfy the necessity test, the expert opinion must be necessary "in the sense that it provides information which is likely to be outside the experience and knowledge of a judge or jury". The affiant asserts on the basis of his expertise some facts relating to information that is likely to be outside the knowledge of a reviewing judge. The FCA believed that the affidavit should have been considered in assessing whether the exemptions were properly claimed and applied by CSIS and the DEA.

(6) The constitutional Issues

- **Subsection 2(b) Charter argument**

The appellant's argument is that the mandatory nature of s. 51 of the Act is contrary to para. 2(b) of the *Charter* because ss. 51(2)(a) and subs. 51(3) *PA* direct that a hearing into the refusal to disclose information by reason of paras. 19(1)(a) or (b) or s. 21 shall be heard *in camera* and that the head of the institution concerned shall be given the opportunity to make representations *ex parte*. In summary, the Court ruled that para. 51(2)(a) and subs. 51(3) infringe subs. 2(b) of the *Charter*. However, the Court agreed that these provisions are saved under s. 1 *Charter*. In any event, the affirmative set of procedures requested by the appellant as a way to open up the review process concerning the state's refusal to disclose personal information is not an appropriate remedy in this case.

- **Sections 7 and 8 Charter arguments**

The appellant submitted that the Motions Judge erred in holding that the impugned provisions of s. 51 of the Act do not violate s. 7 and by implication s. 8 *Charter*. In summary, the Court ruled that the mandatory provisions of s. 51 dealing with *in camera* and *ex parte* proceedings do not engage the liberty interests envisaged by s. 7 *Charter*. Like the Motions Judge, the FCA found s. 51 to be merely a procedural provision aimed at preventing the accidental disclosure of national security information or foreign confidences and is tied to a process which simply requires disclosure of all personal information to a judge for the purpose of assessing whether the exemptions being claimed by the head of a government institution are justified. By providing, in limited situations, that an *ex parte* and *in camera* hearing will be held with respect to a refusal to disclose, one cannot reasonably maintain that such a procedural safeguard “deprives” an applicant of his liberty interest.

The Court also ruled that what is important to note is that the mandatory nature of s. 51 in respect of *ex parte* and *in camera* proceedings does not detract from the right of access provided for under s. 12 of the *Privacy Act*. By contrast, the collection, use and dissemination of personal information is what triggers the right to privacy and s. 7 *Charter*. Section 51 is only a procedural provision for determining whether an exemption from disclosure has been validly claimed. The deprivation, if it exists, lies elsewhere in the Act. Those provisions, however, are not in issue.

**WILLIAM ROWAT V. INFORMATION COMMISSIONER AND
DEPUTY INFORMATION COMMISSIONER OF CANADA
INDEXED AS: ROWAT V. CANADA (INFORMATION
COMMISSIONER)**

File No.:	T-701-99
References:	[2000] F.C.J. No. 832 (QL) (F.C.T.D.)
Date of Decision:	June 9, 2000
Before:	Campbell J. (F.C.T.D.)
Section(s) of <i>ATIA</i> / <i>PA</i> :	S. 36 <i>Access to Information Act</i> (<i>ATIA</i>)
Other statutes:	S. 2(b) <i>Canadian Bill of Rights</i> ; ss. 7 and 8 <i>Canadian Charter of</i> <i>Rights and Freedoms</i>

Abstract

- Scope of the powers of the Information Commissioner under the *ATIA*
- Scope of para. 36(1)(f) *ATIA* and the ejusdem generis rule of statutory interpretation
- Meaning of “independent” and “impartial” in para. 11(d) of the *Charter*, as it applies to the Information Commissioner’s power to cite for contempt of court for refusing to answer questions
- Para. 36(1)(a) *ATIA* and s. 7 *Charter* rights and para. 2(b) *Canadian Bill of Rights*

Issues

- (1) Whether para. 30(1)(f) *ATIA* confers jurisdiction on the Commissioner to investigate the complaints made in the present case?
- (2) Whether para. 36(1)(a) *ATIA* offends para. 11(d) of the *Charter* because the Commissioner is neither “independent” nor “impartial”?
- (3) Does s. 36 *ATIA* engage s. 7 of the *Charter* and para. 2(e) of the *Canadian Bill of Rights*?

Facts

Mr. Rowat is a Senior Advisor to the PCO and was Deputy Minister of the Department of Fisheries and Oceans between May 1994 and August 1997. In August 1997, Mr. Rowat was seconded from the Government of Canada to the Government of Newfoundland as a negotiator for the Voisey’s Bay mining project. The Information Commissioner received complaints against the heads of the PCO, and the Department of Fisheries and Oceans. These complaints made were as a result of a perceived breach of confidentiality arising out of the processing of access to information requests regarding Mr. Rowat’s secondment, and his work-related expense claims between October 1996 and August 1997.

In February 1999, in applying the powers provided in s. 36 *ATIA*, the Deputy Commissioner wrote to Mr. Rowat informing him that he wished to examine him under oath. This action was taken because, during the Deputy Commissioner’s initial investigation, Mr. Rowat refused to provide the name of the person who revealed to him the identity of the party seeking

information relating to his role as a public official. Mr. Rowat appeared before the Deputy Commissioner accompanied by counsel for the PCO. The Deputy IC ordered Mr. Rowat to respond to questions regarding his source of information. Mr. Rowat refused to answer and the Deputy IC advised Mr. Rowat that he would set a date upon which Mr. Rowat would be required to show cause for why he should not be held in contempt. Mr. Rowat filed for judicial review to prohibit the conduct of the show cause hearing and challenged the constitutionality of para. 36(1)(a) *ATIA*.

Mr. Rowat was informed that, subject to the outcome of this application, the Commissioner intends to deal with Mr. Rowat's alleged contempt by appointing a former Quebec Superior Court Judge as the Commissioner's delegate to conduct the show cause hearing pursuant to the *Federal Court Rules*.

Decision

The application for judicial review was dismissed and there was no impediment to conducting the show cause hearing. Costs are awarded to the Information Commissioner.

Reasons

Issue 1

The Commissioner has jurisdiction to investigate the complaints made at hand under para. 30(1)(f) *ATIA*.

The Court ruled that the standard of review of the Commissioner's decision to proceed to a show cause hearing,

being one of jurisdiction, is “correctness” and ruled that para. 30(1)(f) *ATIA* confers jurisdiction on the Commissioner to investigate the complaints in this case. The Court was of the view that by para. 30(1)(f), the Commissioner “shall receive and investigate complaints...in respect of any other matter relating to requesting or obtaining access to records under the Act”. Thus, by the plain meaning of the words used, the Commissioner’s obligation has wide scope. The Court also rejected the argument that the ejusdem generis rule of statutory interpretation restricts para. 30(1)(f) to the powers listed in paras. 30(1)(a) to 30(1)(e), namely the power to investigate complaints respecting the release of information by government departments to requesters. Where clear intention is stated by Parliament, the rule does not apply and Parliament’s intention is clear with respect to para. 30(1)(f).

Issue 2

While s. 11 of the *Charter* is engaged by para. 36(1)(a) *ATIA*, there is no breach of para. 11(d) of the *Charter* because the Commissioner is independent and impartial in proceeding under para. 36(1)(a).

On the issue of whether s. 11 of the *Charter* was engaged, the Court ruled that s. 11 is triggered with respect to contempt proceedings. *Citing Bhatnager v. Canada (Minister of Employment and Immigration)*, [1990] 2 S.C.R. 217, at 224 and the case of *Vidéotron Ltée v. Industries Microlec Produits Électroniques Inc.*, [1992] 2 S.C.R. 1065 which deals with civil contempt under the *Quebec Code of Civil Procedure*, the Court reiterated what Lamer C.J. said at p. 1071:

It is clear from reading art. 50 of the *Code of Civil Procedure*, that for all practical purposes, the Quebec

legislature has created an offence. The fact that it chose to deal with contempt of court in the *Code of Civil Procedure* does not in any way alter the fact that, having regard to the *Canadian Charter of Rights and Freedoms*, a person cited for contempt of court is a person charged with an offence within the meaning of s. 11 of the *Charter*, and enjoys the constitutional guarantee contained in s. 11(c), which specifically provides that a person charged with an offence may not be compelled to testify.

Consequently, s. 11 of the *Charter* is engaged by para. 36(1)(a) *ATIA*.

On the issue of the Commissioner's "independence and impartiality", the test for each of independence and impartiality is similar and is stated in *R. v. Généreux*, [1992] 1 S.C.R. at 286-87 and is composed of three criteria: security of tenure, financial independence and institutional independence of the tribunal with respect to matters of administration bearing directly on the exercise of its judicial function. Justice Campbell ruled that the *ATIA* provides for compliance by the Commissioner with the three essential conditions of judicial independence. The Court therefore found that, in exercising the duties required under the *ATIA*, an informed and reasonable person would perceive the Commissioner as independent.

With respect to impartiality, Justice Campbell ruled that "there is no evidence whatsoever that the Commissioner has any personal interest in the outcome of the investigation being conducted in the present case. Indeed, apart from holding Mr. Rowat accountable to answer the questions put as an obligation imposed by the Act, there is no evidence that the Commissioner has any institutional interest in a particular

answer...All the Commissioner is attempting to do is comply with the mandatory requirements of the Act through the application of para. 30(1)(f) and the use of para. 36(1)(a). This does not make him partial.” In fact, the Court was of the view that in exercising the duties required under the Act, and in particular with respect to the conduct of the present case, an informed and reasonable person would perceive the Commissioner as impartial.

Issue 3

While s. 7 of the *Charter* is engaged, no breach has occurred and para. 2(e) of the *Canadian Bill of Rights* has not been contravened.

With respect to these two human rights provisions, the Commissioner admits that s. 7 of the *Charter*, and para. 2(e) of the *Canadian Bill of Rights* are engaged by the use of s. 36 of the Act. The Court found that the following procedural safeguards have been provided to Mr. Rowat: precise notice of the nature of his alleged contempt; a description provided to him of the Commissioner’s powers; an opportunity to consider whether he wishes to change his position; an adjournment granted to retain and instruct independent legal counsel; and a full opportunity for his counsel to review the transcripts of the proceedings in which the allegation of contempt arises. In addition, the future event of the show cause proceeding does not raise a breach concern because it will be conducted in accordance with the *Federal Court Rules*.

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USE OF THE SOCIAL INSURANCE NUMBER

Use of the Social Insurance Number

It is the policy of the government of Canada to prevent the Social Insurance Number from becoming a universal identifier by:

- limiting collection and use of the SIN by institutions to specific acts, regulations and programs; and
- notifying individuals clearly as to the purposes for collecting the SIN and whether any right, benefit or privilege could be withheld or any penalty imposed if the number is not disclosed to a federal institution requesting it.

Government institutions must:

- limit their uses of the Social Insurance Number (SIN) for administrative purposes to those authorized by statute or regulation and for administering pensions, income tax, health and social programs (as listed below);
- not withhold any right, benefit or privilege nor impose any penalty by reason of an individual's refusal to disclose the SIN to a government institution except for the purposes set out below or as otherwise authorized by Parliament;
- when collecting the SIN, inform the individual of the purpose for which the number is being collected; the authority under which the number is required; and whether any right, benefit or privilege can be withheld or penalty imposed if the number is not disclosed; and
- when the SIN is included in any personal information bank, so indicate in the description of the bank provided for *Info Source* and cite the authority under which the number is collected and the purposes for which it is used.

Legislated Uses of the Social Insurance Number

Budget Implementation Act 1998
(Canada Education Savings Grants)

Canada Elections Act

Canada Labour Standards Regulations
(Canada Labour Code)

Canada Pension Plan Regulations
(Canada Pension Plan)

Canada Student Financial Assistance Act and Regulations

Canada Student Loans Regulations
(Canada Student Loans Act)

Canadian Wheat Board Act

Employment Insurance Act

Excise Tax Act (Part IX)

Farm Income Protection Act

Garnishment Regulations
(Family Orders and Agreements Enforcement
Assistance Act)

Gasoline and Aviation Gasoline Excise
Tax Application Regulations
(Excise Tax Act)

Income Tax Act

Labour Adjustment Benefits Act

Old Age Security Regulations
(Old Age Security Act)

Tax Rebate Discounting Regulations
(Tax Rebate Discounting Act)

Veterans Allowance Regulations
(War Veterans Allowance Act)

Programmes Authorized to Use the SIN

Immigration Adjustment Assistance Program
(Citizenship and Immigration Canada)

Income and Health Care Programs
(Veterans Affairs Canada)

Income Tax Appeals and Adverse Decisions
(Revenue Canada)

Labour Adjustment Review Board
(Human Resources Development Canada)

National Dose Registry for Occupational Exposures
to Radiation
(Health Canada)

Rural and Native Housing Program
(Canada Mortgage and Housing Corporation)

Social Assistance and Economic Development Program
(Indian and Northern Affairs Canada)

**INFORMATION
ON THE
GOVERNMENT
OF CANADA
AND THE
CANADA SITE**

Information on the Government of Canada

Information on the Government of Canada is the federal government's bilingual, toll-free general information and referral service.

You may contact Information on the Government of Canada at the following telephone numbers:

Toll-free 1 800 O-Canada (1 800 622-6232)

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Canada Site

The Canada Site provides Internet users with a single electronic access point to general information about Canada, the federal government and its programs and services.

The Internet address for this site is www.Canada.gc.ca.

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Every government department and agency subject to the Communications Policy is required to provide copies of its publications to the DSP. The publications are then sent to public and academic libraries which house, catalogue and provide reference services for them. The depositories make the collections available free of charge to all Canadians and for interlibrary loans.

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The DSP, established in 1927, ensures that departments and agencies have a way of making their conventional, electronic and alternative media publications available to the public. Without the DSP, Canadians would have difficulty gaining timely access to federal government information.

There are two types of depository libraries. "Full" depository libraries automatically receive all information products disseminated through the program. "Selective" depository libraries choose from a checklist those publications that are of particular interest to their users. DSP sites are regionally distributed across Canada.

For further information, contact Depository Services Personnel at the address below:

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Phone: (613) 993-1325

Fax: (613) 941-2410

Website: <http://dsp-psd.pwgsc.gc.ca>

Depository Libraries

Note: "Full" depository libraries are indicated by two asterisk (**).

Alberta

Airdrie Municipal Library
Airdrie, Alberta

Athabasca University Library
Athabasca, Alberta

Augustana University College Library
Camrose, Alberta

Banff Public Library
Banff, Alberta

Bonnyville Municipal Library
Bonnyville, Alberta

Calgary Public Library
Calgary, Alberta

Camrose Public Library
Camrose, Alberta

Cardston Public Library
Cardston, Alberta

Chinook Arch Regional Library
Lethbridge, Alberta

Cold Lake Public Library
North Branch
Cold Lake, Alberta

Concordia University College
of Alberta Library
Edmonton, Alberta

Edmonton Public Library
Calder Branch
Edmonton, Alberta

Edmonton Public Library
Capilano Branch
Edmonton, Alberta

Edmonton Public Library **
Edmonton, Alberta

Edmonton Public Library
Highlands Branch
Edmonton, Alberta

Edmonton Public Library
Idylwylde Branch
Edmonton, Alberta

Edmonton Public Library
Jasper Place Branch
Edmonton, Alberta

Edmonton Public Library
Southgate Branch
Edmonton, Alberta

Edson and District Public Library
Edson, Alberta

Fort McMurray Public Library
Fort McMurray, Alberta

Grand Centre Public Library
Cold Lake, Alberta

Grande Prairie Public Library
Grande Prairie, Alberta

Grande Prairie Regional
College Library
Grande Prairie, Alberta

Grant MacEwan Community College
Edmonton, Alberta

High River Centennial Library
High River, Alberta

Keyano College Library
Fort McMurray, Alberta

Lakeland College Library
Vermilion, Alberta

Leduc Public Library
Leduc, Alberta

Legislature Library **
Government Documents
Edmonton, Alberta

Lethbridge Community College,
Buchanan Library
Lethbridge, Alberta

Lloydminster Public Library
Lloydminster, Alberta

Medicine Hat College Library
Medicine Hat, Alberta

Medicine Hat Public Library
Medicine Hat, Alberta

Mount Royal College Library
Calgary, Alberta

Northern Alberta Institute of
Technology
Edmonton, Alberta

Olds College, Library
Olds, Alberta

Parkland Regional Library
Lacombe, Alberta

RCMP Century Library
Beaverlodge, Alberta

Red Deer College,
Learning Resources Centre
Red Deer, Alberta

Red Deer Public Library
Red Deer, Alberta

Southern Alberta Institute
of Technology
Learning Resources Center
Calgary, Alberta

St. Albert Public Library
St. Albert, Alberta

University of Alberta
Bibliothèque – Faculté Saint-Jean
Edmonton, Alberta

University of Alberta **
Humanities and Social
Sciences Library
Edmonton, Alberta

University of Alberta
John A. Weir Memorial Law Library
Law Centre
Edmonton, Alberta

University of Alberta Library
Winspear Business Reference Room
Edmonton, Alberta

University of Calgary Health Sciences
Library
Calgary, Alberta

University of Calgary Library **
Calgary, Alberta

University of Lethbridge Library
Lethbridge, Alberta

Vegreville Public Library
Vegreville, Alberta

Wetaskiwin Public Library
Wetaskiwin, Alberta

Yellowhead Regional Library
Spruce Grove, Alberta

British Columbia

Alert Bay Public Library
Alert Bay, British Columbia

British Columbia Institute of
Technology Library
Burnaby, British Columbia

Burnaby Public Library
Burnaby, British Columbia

Burns Lake Public Library
Burns Lake, British Columbia

Camosun College Library
Victoria, British Columbia

Capilano College Library
North Vancouver, British Columbia

Cariboo College Library
Kamloops, British Columbia

Cariboo-Thompson Nicola
Library System
Merritt Branch
Merritt, British Columbia

Castlegar and District Public Library
Castlegar, British Columbia

Chilliwack Public Library
Fraser Valley Regional Library System
Chilliwack, British Columbia

College of New Caledonia Library
Prince George, British Columbia

College of the Rockies
Cranbrook, British Columbia

Coquitlam Public Library
Coquitlam, British Columbia

Cranbrook Public Library
Cranbrook, British Columbia

Dawson Creek Municipal
Public Library
Dawson Creek, British Columbia

Delta Pioneer Ladner Library
Delta, British Columbia

Douglas College Library
New Westminster, British Columbia

Elkford Public Library
Elkford, British Columbia

Fernie Public Library
Fernie, British Columbia

Fort St. James Centennial Library
Fort St. James, British Columbia

Fort St. John Public Library
Fort St. John, British Columbia

Fraser Valley Regional Library
Clearbrook Branch
Abbotsford, British Columbia

George Mackie Library
Delta, British Columbia

Grand Forks Public Library
Grand Forks, British Columbia

Greater Victoria Public Library
Victoria, British Columbia

Houston Public Library Association
Goold "Pioneer" Memorial Library
Houston, British Columbia

Kimberley Public Library
Kimberley, British Columbia

Kitimat Public Library
Kitimat, British Columbia

Kwantlen University College Library
Surrey, British Columbia

Langara College Library
Vancouver, British Columbia

Langley Centennial Library
Fraser Valley Regional Library System
Langley, British Columbia

Legislative Library ** Parliament Buildings Victoria, British Columbia	Northwest Community College, Learning Resource Centre Terrace, British Columbia
Library Services Branch Victoria, British Columbia	Okanagan Regional Library Kelowna, British Columbia
MacKenzie Public Library MacKenzie, British Columbia	Okanagan Regional Library Vernon Branch Vernon, British Columbia
Malaspina College, Learning Resource Centre Nanaimo, British Columbia	Okanagan University College, Library Kelowna, British Columbia
Maple Ridge Library Maple Ridge, British Columbia	Pacific Vocational Institute Burnaby Campus Library and Learning Resource Centre Burnaby, British Columbia
Mission Centennial Library Fraser Valley Regional System Mission, British Columbia	Penticton Public Library Penticton, British Columbia
Nelson Municipal Library Nelson, British Columbia	Port Moody Public Library Port Moody, British Columbia
New Westminster Public Library New Westminster, British Columbia	Powell River District Public Library Powell River, British Columbia
North Vancouver City Library North Vancouver, British Columbia	Prince George Public Library Prince George, British Columbia
North Vancouver District Library North Vancouver, British Columbia	Prince Rupert Library Prince Rupert, British Columbia
Northern Lights College Library Dawson Creek, British Columbia	

Quesnel Public Library
Cariboo Library Network
Quesnel, British Columbia

Richmond Public Library
Richmond, British Columbia

Selkirk College Library
Castlegar, British Columbia

Simon Fraser University **
W.A.C. Bennett Library
Burnaby, British Columbia

South Delta Library
Fraser Valley Regional Library
Delta, British Columbia

Sparwood Public Library
Sparwood, British Columbia

Surrey Public Library
Guildford Branch, Reference
Surrey, British Columbia

Terrace Public Library
Terrace, British Columbia

Terry Fox Library
Fraser Valley Regional Library System
Port Coquitlam, British Columbia

Thompson-Nicola Regional District
Library System
Kamloops Library

Kamloops, British Columbia

Trail and District Public Library
Trail, British Columbia

Trinity Western University, Norma
Marion Alloway Library
Langley, British Columbia

University College of the Fraser Valley,
Learning Resource Centre
Chilliwack, British Columbia

University of British Columbia
Faculty of Commerce and
Business Administration
David Lam Management
Research Library
Vancouver, British Columbia

University of British Columbia **
Vancouver, British Columbia

University of Northern
British Columbia Library
Prince George, British Columbia

University of Victoria
Diana M. Priestly Law Library
Victoria, British Columbia

University of Victoria **
Victoria, British Columbia

Vancouver Community College
King Edward Campus Library
Vancouver, British Columbia

Vancouver Island Regional Library
Nanaimo, British Columbia

Vancouver Public Library **
Vancouver, British Columbia

Vanderhoof Public Library
Vanderhoof, British Columbia

West Vancouver Memorial Library
West Vancouver, British Columbia

White Rock Library
Fraser Valley Regional Library
White Rock, British Columbia

Williams Lake Public Library
Cariboo Regional District Library
System
Williams Lake, British Columbia

Manitoba

Assiniboine Community College
Library
Brandon, Manitoba

Bibliothèque de Saint-Boniface
Winnipeg, Manitoba

Boissevain and Morton
Regional Library
Boissevain, Manitoba

Boyne Regional Library
Carman, Manitoba

Brandon University
Brandon, Manitoba

Evergreen Regional Library
Gimli Branch
Gimli, Manitoba

Flin Flon Public Library
Flin Flon, Manitoba

Jake Epp Library
(formerly Steinbach Public Library)
Steinbach, Manitoba

Jolys Regional Library
St-Pierre Jolys, Manitoba

Keewatin Community College Library
The Pas, Manitoba

Lakeland Regional Library
Killarney, Manitoba

Legislative Library
Winnipeg, Manitoba

Public Library Services
Brandon, Manitoba

Red River Community College Library
Winnipeg, Manitoba

Selkirk and St. Andrews
Regional Library
Selkirk, Manitoba

South Central Regional Library
Morden Branch
Morden, Manitoba

South Central Regional Library
Winkler Branch
Winkler, Manitoba

South Interlake Regional Library
Stonewall, Manitoba

Southwestern Manitoba
Regional Library
Melita, Manitoba

St. Paul's College Library
Winnipeg, Manitoba

The Pas Public Library
The Pas, Manitoba

University of Manitoba
E.K. Williams Law Library
Winnipeg, Manitoba

University of Manitoba **
Elizabeth Dafoe Library
Winnipeg, Manitoba

University of Winnipeg Library
Winnipeg, Manitoba

Western Manitoba Regional Library
Brandon, Manitoba

Western Manitoba Regional Library
Carberry / North Cypress Branch
Carberry, Manitoba

Western Manitoba
Regional Library
Neepawa Branch
Neepawa, Manitoba

Winnipeg Public Library
Winnipeg, Manitoba

New Brunswick

Bibliothèque Le Cormoran
Centre Samuel de Champlain
Saint-Jean, New Brunswick

Bibliothèque législative **
Fredericton, New Brunswick

Bibliothèque régionale d'Albert-
Westmorland-Kent
Richibucto, New Brunswick

Bibliothèque régionale de Chaleur
Campbellton, New Brunswick

Bibliothèque régionale
du Haut-Saint-Jean
Edmundston, New Brunswick

Centre universitaire Saint Louis Maillet,
Bibliothèque
Edmundston, New Brunswick

Collège communautaire du Nouveau-
Brunswick, Bibliothèque
Campus de Bathurst
Bathurst, New Brunswick

Collège communautaire
du Nouveau-Brunswick
Campus d'Edmunston, Bibliothèque
Edmundston, New Brunswick

Kennebecasis Public Library
Rothesay, New Brunswick

L.P. Fisher Public Library
Woodstock, New Brunswick

Moncton Public Library /
Bibliothèque publique de Moncton
Moncton, New Brunswick

Mount Allison University **
Sackville, New Brunswick

New Brunswick Community College
Moncton, New Brunswick

Région de Bibliothèques Chaleur
Bibliothèque du centenaire Nepisiguit
Bathurst, New Brunswick

Saint John Regional Library
Information Centre
Saint John, New Brunswick

St. Croix Public Library
St. Stephen, New Brunswick

Université de Moncton
Campus de Shippagan – Bibliothèque
Shippegan, New Brunswick

Université de Moncton **
Bibliothèque Champlain
Moncton, New Brunswick

University of New Brunswick
Gerard V. LaForest Law Library
Fredericton, New Brunswick

University of New Brunswick **
Harriet Irving Library
Fredericton, New Brunswick

University of New Brunswick
Ward Chipman Library
Saint John, New Brunswick

York Regional Library
Fredericton, New Brunswick

Newfoundland and Labrador

College of the North Atlantic Library
St. John's, Newfoundland
and Labrador

Corner Brook City Library
Corner Brook, Newfoundland
and Labrador

Fisheries and Marine Institute Library
St. John's, Newfoundland
and Labrador

Gander Regional Library
Gander, Newfoundland and Labrador

Legislative Library
St. John's, Newfoundland
and Labrador

Memorial University **
Queen Elizabeth II Library
St. John's, Newfoundland
and Labrador

Memorial University of Newfoundland
Sir Wilfred Grenfell College Library
Corner Brook, Newfoundland
and Labrador

Provincial Information and
Library Resources Board
Provincial Resource Library
Arts and Culture Centre
St. John's, Newfoundland
and Labrador

Provincial Library Services
West Newfoundland and
Labrador Division
Corner Brook, Newfoundland and
Labrador

Provincial Public Library Board
Central Division
Gander, Newfoundland and Labrador

Westviking College
Library
Stephenville, Newfoundland
and Labrador

Northwest Territories

Aurora College
Thebacha Campus Library
Fort Smith, Northwest Territories

Inuvik Centennial Library
Inuvik, Northwest Territories

Legislative Library, Northwest
Territories **
Yellowknife, Northwest Territories

Yellowknife Public Library
Yellowknife, Northwest Territories

Nova Scotia

Acadia University **

Vaughan Memorial Library
Government Documents
Wolfville, Nova Scotia

Annapolis Valley Regional Library
Bridgetown, Nova Scotia

Cape Breton Regional Library
Sydney, Nova Scotia

Colchester-East Hants Regional Library
Truro, Nova Scotia

Dalhousie University
Faculty of Law Library
Halifax, Nova Scotia

Dalhousie University **
Killam Memorial Library
Halifax, Nova Scotia

DalTech Library
DalTech
Dalhousie University
Halifax, Nova Scotia

Eastern Counties Regional Library
Mulgrave, Nova Scotia

Halifax Regional Library
Lower Sackville, Nova Scotia

Mount Saint Vincent University, Library
Halifax, Nova Scotia

Nova Scotia Agricultural College,
MacRae Library
Truro, Nova Scotia

Nova Scotia College of Art, Library
Halifax, Nova Scotia

Nova Scotia Legislative Library
Halifax, Nova Scotia

Nova Scotia Provincial Library
Halifax, Nova Scotia

Nova Scotia Teachers College,
Learning Resources Centre
Truro, Nova Scotia

Pictou-Antigonish Regional Library
New Glasgow, Nova Scotia

South Shore Regional Library
Bridgewater, Nova Scotia

St. Francis Xavier University
Angus L. MacDonald Library
Antigonish, Nova Scotia

St. Mary's University
Patrick Power Library
Halifax, Nova Scotia

Université Saint-Anne,
Bibliothèque Louis R. Comeau
Church Point, Nova Scotia

University College of
Cape Breton Library
Sydney, Nova Scotia

Western Counties Regional Library
Yarmouth, Nova Scotia

Nunavut

Nunavut Arctic College
Nunatta Campus Library
Iqaluit, Nunavut

Nunavut Legislative Library
Iqaluit, Nunavut

Ontario

Advocacy Resource Center for
the Handicapped
Toronto, Ontario

Ajax Public Library
Ajax, Ontario

Algoma University College
Sault Ste. Marie, Ontario

Algonquin College of Applied Arts
and Technology, Library
Woodroffe Campus
Nepean, Ontario

Algonquin College of Applied Arts
and Technology, Resource Center
School of Renfrew County
Pembroke, Ontario

Algonquin College of Applied Arts
and Technology
Rideau Campus, Resource Centre
Ottawa, Ontario

Algonquin College of Applied Arts
and Technology
School of Lanark County
Resource Center
Perth, Ontario

Ancaster Public Library
Ancaster, Ontario

Arnprior Public Library
Arnprior, Ontario

Atikokan Public Library
Atikokan, Ontario

Aurora Public Library
Aurora, Ontario

Bancroft Public Library
Bancroft, Ontario

Barrie Public Library
Barrie, Ontario

Base Borden Public and
Military Library
CFB Borden, Ontario

Bathurst Clack Library
Thornhill, Ontario

Belleville Public Library
Belleville, Ontario

Bibliothèque publique de Bourget
Bourget, Ontario

Bibliothèque publique de Gloucester
Gloucester, Ontario

Bibliothèque publique de Gloucester
Public Library
Gloucester, Ontario

Bibliothèque publique de Hawkesbury
Hawkesbury, Ontario

Bibliothèque publique de Vanier
Vanier, Ontario

Bracebridge Public Library
Bracebridge, Ontario

Bradford West Gwillimbury
Public Libraries
Bradford, Ontario

Brampton Public Library
Chinguacousy Branch
Brampton, Ontario

Brantford Public Library
Brantford, Ontario

Brock University Library
St. Catharines, Ontario

Brockville Public Library
Brockville, Ontario

Bruce County Public Library
Port Elgin, Ontario

Burlington Public Library
Burlington, Ontario

Cambrian College
Sudbury, Ontario

Cambridge Public Library
Cambridge, Ontario

Canadore College, Education
Centre Library
North Bay, Ontario

Carleton Place Public Library
Carleton Place, Ontario

Centennial College of Applied Arts
and Technology
Scarborough, Ontario

Chapleau Public Library
Chapleau, Ontario

Chatham-Kent Public Library
Chatham, Ontario

Chatham-Kent Public Library
Wallaceburg Branch
Wallaceburg, Ontario

City of Nanticoke Public Library
Selkirk Branch
Selkirk, Ontario

City of Nanticoke Public Library
Waterford Branch
Waterford, Ontario

City of York Public Library
Evelyn Gregory Branch
City of York, Ontario

City of York Public Library
Mount Dennis Branch
City of York, Ontario

Clarington Public Library
Bowmanville Branch
Bowmanville, Ontario

Clarington Public Library
Clarke Branch
Orono, Ontario

Clearview Public Library
Stayner, Ontario

Cobourg Public Library
Cobourg, Ontario

Cochrane Public Library
Cochrane, Ontario

Collège Boréal, Centre de ressources
Sudbury, Ontario

Collège universitaire de Hearst,
Bibliothèque Maurice Saulnier
Hearst, Ontario

Collingwood Public Library
Collingwood, Ontario

Confederation College of Applied Arts
and Technology

Challis Resource Centre
Thunder Bay, Ontario

Cornwall Public Library
Cornwall, Ontario

County of Prince Edward
Public Library

Picton Branch
Picton, Ontario

County of Simcoe Library Co-operative
Midhurst, Ontario

Cumberland Public Library
Orleans, Ontario

Delhi Township Public Library
Delhi, Ontario

Dundas Public Library
Dundas, Ontario

Dunnville Public Library
Dunnville, Ontario

Durham College of Applied Arts and
Technology, Library Resource Centre
Oshawa, Ontario

Durham Public Library
Durham, Ontario

Ear Falls Public Library
Ear Falls, Ontario

East Gwillimbury Public Library
Holland Landing, Ontario

East York Public Library
Leaside Branch
Toronto, Ontario

East York Public Library
Thorncliffe Branch
Toronto, Ontario

Elliot Lake Public Library
Algo Centre Mall
Elliot Lake, Ontario

Englehart Public Library
Englehart, Ontario

Espanola Public Library
Espanola, Ontario

Essex County Public Library
Essex, Ontario

Etobicoke Public Library
Albion Branch
Etobicoke, Ontario

Etobicoke Public Library
Eatonville Branch
Etobicoke, Ontario

Etobicoke Public Library
Etobicoke, Ontario

Etobicoke Public Library
Long Branch
Etobicoke, Ontario

Etobicoke Public Library
New Toronto Library
Etobicoke, Ontario

Etobicoke Public Library
Richview Branch
Etobicoke, Ontario

Fanshawe College Library
London, Ontario

Fort Erie Public Library
Fort Erie, Ontario

Fort Frances Public Library
Fort Frances, Ontario

Frontenac County Library
Kingston, Ontario

Gananoque Public Library
Gananoque, Ontario

Georgian College of Applied Arts and
Technology, Learning Resource Centre
Barrie, Ontario

Georgina Public Library
Keswick Branch
Keswick, Ontario

Glendon College, Leslie Frost Library
Toronto, Ontario

Gloucester Public Library
Blossom Park Branch
Gloucester, Ontario

Goulbourn Township Public Library
Stittsville, Ontario

Gravenhurst Public Library
Gravenhurst, Ontario

Greely Public Library
Greely, Ontario

Guelph Public Library
Guelph, Ontario

Haileybury Public Library
Haileybury, Ontario

Haliburton County Public Library
Haliburton, Ontario

Halton Hills Public Libraries
Acton Branch
Acton, Ontario

Halton Hills Public Libraries
Georgetown Branch
Georgetown, Ontario

Hamilton Public Library **
Hamilton, Ontario

Hanover Public Library
Hanover, Ontario

Humber College of Applied Arts and
Technology, Learning Resource Centre
Etobicoke, Ontario

Huntsville Public Library
Huntsville, Ontario

Huron College, Silcox Memorial Library
London, Ontario

Huron County Library
Clinton, Ontario

Kanata Public Library
Hazeldean Branch
Kanata, Ontario

Kent County Public Library
Tilbury Branch
Tilbury, Ontario

King Township Public Library
King City, Ontario

King's College
The Lester A. Wemple Library
London, Ontario

Kingston Public Library
Kingston, Ontario

Kitchener Public Library
Kitchener, Ontario

La cité collégiale, Centre
de documentation
Ottawa, Ontario

Lakefield Public Library
Lakefield, Ontario

Lakehead University **
Chancellor Paterson Library
Thunder Bay, Ontario

Lakehead University
Faculty of Education Library
Thunder Bay, Ontario

Lambton College of Applied Arts and
Technology, Resource Centre
Sarnia, Ontario

Lambton County Library
Sarnia Branch
Sarnia, Ontario

Laurentian University **
J.N.Desmarais Library
Sudbury, Ontario

Leamington Public Library
Leamington, Ontario

Legislative Library **
Toronto, Ontario

Lennox and Addington
County Public Library
Amherstview Branch
Amherstview, Ontario

Library of Parliament /
Bibliothèque du Parlement **
Ottawa, Ontario

Lincoln Public Library
Beamsville, Ontario

Lindsay Public Library
Lindsay, Ontario

London Public Libraries
London, Ontario

Loyalist College of Applied Arts and
Technology Library
Belleville, Ontario

Manitouwadge Public Library
Manitouwadge, Ontario

McMaster University **
Hamilton, Ontario

Metropolitan Toronto Reference
Library **
Toronto, Ontario

Metro Urban Affairs Library
Toronto, Ontario

Middlesex County Library
Ailsa Craig Branch
Ailsa Craig, Ontario

Middlesex County Library
Arva, Ontario

Middlesex County Library
Dorchester Branch
Dorchester, Ontario

Middlesex County Library
Glencoe Branch
Glencoe, Ontario

Middlesex County Library
Lucan Public Branch
Lucan, Ontario

Middlesex County Library
Parkhill, Ontario

Midland Public Library
Midland, Ontario

Milton Public Library
Milton, Ontario

Mississauga Library System
Mississauga, Ontario

Mohawk College
Brant Elgin Campus, Library
Resource Centre
Brantford, Ontario

Mohawk College of Applied Arts
and Technology, Library
Hamilton, Ontario

National Library of Canada /
Bibliothèque nationale du Canada **
Ottawa, Ontario

Nepean Public Library
Nepean, Ontario

Newmarket Public Library
Newmarket, Ontario

New Tecumseth Public Library
Alliston, Ontario

Niagara College of Applied Arts and
Technology, Learning Resource Centre
Welland, Ontario

Niagara Falls Public Library
Niagara Falls, Ontario

Niagara-on-the-Lake Public Library
Niagara-on-the-Lake, Ontario

Nickel Center Public Library
Coniston Branch
Coniston, Ontario

Nickel Centre Public Library
Garson Branch
Garson, Ontario

Nipigon Public Library
Nipigon, Ontario

North Bay Public Library
North Bay, Ontario

North York Public Library
Barbara Frum Branch
North York, Ontario

North York Public Library
Business and Urban Affairs
North York, Ontario

North York Public Library
Don Mills Regional Branch
North York, Ontario

North York Public Library
Fairview Branch
North York, Ontario

North York Public Library
North York, Ontario

North York Public Library
York Woods Regional Branch
North York, Ontario

Northern College, Kirkland Lake
Campus, Library Resource Center
Kirkland Lake, Ontario

Northern College
Porcupine Campus Library
Timmins, Ontario

Oakville Public Library
Oakville, Ontario

Ontario Institute for Studies in
Education
R.W.B. Jackson Library
Toronto, Ontario

Ontario Library Service
North West Office
Thunder Bay, Ontario

Orangeville Public Library
Orangeville, Ontario

Orillia Public Library
Orillia, Ontario

Oshawa Public Library
Oshawa, Ontario

Ottawa Public Library /
Bibliothèque publique d'Ottawa
Ottawa, Ontario

Owen Sound Public Library
Owen Sound, Ontario

Oxford County Library
Ingersoll, Ontario

Paris Public Library
Paris, Ontario

Parry Sound Public Library
Parry Sound, Ontario

Pelham Public Library
Fonthill, Ontario

Pembroke Public Library
Pembroke, Ontario

Penetanguishene Public Library
Penetanguishene, Ontario

Perth Public Library
Perth, Ontario

Peterborough Public Library
Peterborough, Ontario

Port Colborne Public Library
Port Colborne, Ontario

Powassan and District Union
Public Library
Powassan, Ontario

Prescott Public Library
Prescott, Ontario

Queen's University **
Joseph S. Stauffer Library
Kingston, Ontario

Queen's University
William R. Lederman Law Library
Kingston, Ontario

Rayside Balfour Public Library
Chelmsford, Ontario

Red Lake Public Library
Red Lake, Ontario

Richmond Hill Public Library
Richmond Hill, Ontario

Ridgetown College of Agricultural
Technology Library
Ridgetown, Ontario

Royal Military College
Massey Library
Kingston, Ontario

Ryerson Polytechnical Institute Library
Toronto, Ontario

Sault College of Applied Arts
and Technology
Sault Ste. Marie, Ontario

Sault Ste. Marie Public Library
Sault Ste. Marie, Ontario

Scarborough Public Library Board
Scarborough, Ontario

Scugog Memorial Public Library
Port Perry, Ontario

Seneca College of Applied Arts
and Technology
Newnham Campus Learning
Resource Centre
North York, Ontario

Shelburne Public Library
Shelburne, Ontario

Sheridan College
Davis Campus Library
Brampton, Ontario

Sheridan College
Trafalgar Road Campus Library
Oakville, Ontario

Simcoe Public Library
Simcoe, Ontario

Sioux Lookout Public Library
Sioux Lookout, Ontario

Sir Sandford Fleming College
Frost Campus Library
Lindsay, Ontario

Sir Sandford Fleming College
Sutherland Campus Library
Peterborough, Ontario

Smiths Falls Public Library
Smiths Falls, Ontario

South River-Machar Union
Public Library
South River, Ontario

St. Catharines Public Library
St. Catharines, Ontario

St. Clair College Library
Resource Centre
Windsor, Ontario

St. Lawrence College Information
Commons
Brockville, Ontario

St. Lawrence College of Applied
Arts and Technology,
Learning Resource Centre
Cornwall, Ontario

St. Lawrence College of Applied
Arts and Technology, Learning
Resource Centre
Kingston, Ontario

Stirling Public Library
Stirling, Ontario

Stoney-Creek Public Library
Stoney-Creek, Ontario

Stormont Dundas and Glengarry
County Library
Finch, Ontario

Stratford Public Library
Stratford, Ontario

Strathroy Public Library
Strathroy, Ontario

St. Thomas Public Library
St. Thomas, Ontario

Sudbury Public Library
Sudbury, Ontario

Teck Centennial Library
Kirkland Lake, Ontario

Thorneloe College
Laurentien University
Sudbury, Ontario

Thorold Public Library
Thorold, Ontario

Thunder Bay Public Library **
Thunder Bay, Ontario

Tillsonburg Public Library
Tillsonburg, Ontario

Timmins Public Library /
Bibliothèque municipale de Timmins
Timmins, Ontario

Toronto Public Library
Jane Dundas Branch
Toronto, Ontario

Toronto Public Library
Maria A. Shchuka Library
Toronto, Ontario

Toronto Public Library
S. Walter Stewart Branch
Toronto, Ontario

Toronto Public Library
Toronto, Ontario

Toronto Public Library
Weston Branch
Toronto, Ontario

Town of Caledon Library
Albion Bolton Branch
Bolton, Ontario

Town of Haldimand Public Libraries
Caledonia, Ontario

Town of Markham Public Libraries
Markham, Ontario

Town of Pickering Public Library
Pickering, Ontario

Trent University
Thomas J. Bata Library
Peterborough, Ontario

Trenton Memorial Public Library
Trenton, Ontario

Trinity College Library
Toronto, Ontario

Université d'Ottawa /
Ottawa University
Bibliothèque de droit /Law Library
Ottawa, Ontario

Université d'Ottawa /
Ottawa University
Bibliothèque Pavillion
René Lamoureux Library
Ottawa, Ontario

Université d'Ottawa /
University of Ottawa **
Bibliothèque Morisset /
Morisset Library
Ottawa, Ontario

University of Guelph Library **
Guelph, Ontario

University of Toronto
Bora Laskin Law Library
Toronto, Ontario

University of Toronto
Faculty of Information Studies, Inforum
Toronto, Ontario

University of Toronto
Faculty of Management,
Business Information Centre Library
Toronto, Ontario

University of Toronto
Sunnybrook Health Science Centre
Dr. R. Ian MacDonald Library
Toronto, Ontario

University of Toronto **
Robarts Library
Toronto, Ontario

University of Toronto at Scarborough
V.W. Bladen Library
Scarborough, Ontario

University of Toronto in Mississauga
Erindale Campus Library
Mississauga, Ontario

University of Waterloo **
Dana Porter Arts Library
Waterloo, Ontario

University of Western Ontario
Business Library and
Information Centre
London, Ontario

University of Western Ontario **
D.B. Weldon Library
London, Ontario

University of Western Ontario
Law Library
London, Ontario

University of Windsor
Curriculum Resource Centre
Windsor, Ontario

University of Windsor **
Leddy Library
Windsor, Ontario

University of Windsor
Paul Martin Law Library
Windsor, Ontario

Uxbridge Township Public Library
Uxbridge, Ontario

Valley East Public Library
Hanmer, Ontario

Victoria County Public Library
Lindsay, Ontario

Victoria University Library
Toronto, Ontario

Wainfleet Township Public Library
Wainfleet, Ontario

Walden Public Library
Lively, Ontario

Waterloo Public Library
Waterloo, Ontario

Waterloo Regional Library
Waterloo, Ontario

Welland Public Library
Welland, Ontario

Wellington County Public Library
Fergus, Ontario

Wentworth Libraries
Hamilton, Ontario

Whitby Public Library
Whitby, Ontario

Whitchurch-Stouffville Public Library
Whitchurch Branch
Stouffville, Ontario

Wilfrid Laurier University Library
Waterloo, Ontario

Windsor Public Library
Windsor, Ontario

Woodstock Public Library
Woodstock, Ontario

York University **
Business and Government
Publications Library
North York, Ontario

York University
Law Library
Toronto, Ontario

York University
Steacie Science Library
Downsview, Ontario

Prince Edward Island

Confederation Centre Public Library
Charlottetown, Prince Edward Island

Government Services Library **
Charlottetown, Prince Edward Island

Holland College Library
Charlottetown, Prince Edward Island

Provincial Library Service
Morell, Prince Edward Island

Rotary Regional Library
Summerside, Prince Edward Island

University of Prince Edward Island
Charlottetown, Prince Edward Island

Quebec

Atwater Library / Bibliothèque Atwater
Montréal, Québec

Beaconsfield Public Library
Beaconsfield, Québec

Bibliothèque Adélarde-Berger
Saint-Jean-sur-Richelieu, Québec

Bibliothèque administrative
Québec, Québec

Bibliothèque centrale de Montréal **
Montréal, Québec

Bibliothèque centrale de prêt
de la Côte Nord
Sept-Îles, Québec

Bibliothèque centrale de prêt
Gaspésie-Îles-de-la-Madeleine
Cap-Chat, Québec

Bibliothèque commémorative
Desautels
Mariville, Québec

Bibliothèque commémorative Pettes /
Pettes Memorial Library
Knowlton (Lac Brome), Québec

Bibliothèque d'Anjou
Anjou, Québec

Bibliothèque de Coaticook
Coaticook, Québec

Bibliothèque de Dorval
Dorval, Québec

Bibliothèque de
l'Assemblée nationale **
Québec, Québec

Bibliothèque de Longueuil
Longueuil, Québec

Bibliothèque de Pointe-Claire
Pointe-Claire, Québec

Bibliothèque de Québec
Michèle Lefebvre, Québec, Québec

Bibliothèque de St. Bruno
Saint-Bruno-de-Montarville, Québec

Bibliothèque du cégep de
Lévis-Lauzon
Lauzon, Québec

Bibliothèque Gatien-Lapointe
Trois-Rivières, Québec

Bibliothèque intermunicipale
Pierrefonds-Dollard-des-Ormeaux
Pierrefonds, Québec

Bibliothèque Jacques-le-Moyne-de-
Sainte-Marie
Varenes, Québec

Bibliothèque municipale
Montréal-Nord, Québec

Bibliothèque municipale
commémorative de St-Lambert
St-Lambert, Québec

Bibliothèque municipale d'Alma
Alma, Québec

Bibliothèque municipale de Amos
Amos, Québec

Bibliothèque municipale
de Baie-Comeau
Baie-Comeau, Québec

Bibliothèque municipale de Beauport
Beauport, Québec

Bibliothèque municipale de Beloeil
Beloeil, Québec

Bibliothèque municipale de Candiac
Candiac, Québec

Bibliothèque municipale de
Charlesbourg
Charlesbourg, Québec

Bibliothèque municipale de Chicoutimi
Chicoutimi, Québec

Bibliothèque municipale de Gatineau
Gatineau, Québec

Bibliothèque municipale de Granby
Granby, Québec

Bibliothèque municipale de
Greenfield Park
Greenfield Park, Québec

Bibliothèque municipale de Jonquière
Ville de Jonquière, Québec

Bibliothèque municipale de Lachute
Lachute, Québec

Bibliothèque municipale de la Tuque
La Tuque, Québec

Bibliothèque municipale de Loretteville
Loretteville, Québec

Bibliothèque municipale de Malartic
Malartic, Québec

Bibliothèque municipale de
Mascouche
Mascouche, Québec

Bibliothèque municipale de Matane
Matane, Québec

Bibliothèque municipale de
Mont-Laurier
Mont-Laurier, Québec

Bibliothèque municipale
de Montréal-Est
Montréal-Est, Québec

Bibliothèque municipale
de Murdochville
Murdochville, Québec

Bibliothèque municipale
de Port-Cartier
Port Cartier, Québec

Bibliothèque municipale de Repentigny
Repentigny, Québec

Bibliothèque municipale
de Rivière-du-Loup
Rivière-du-Loup, Québec

Bibliothèque municipale
de Rouyn-Noranda
Rouyn-Noranda, Québec

Bibliothèque municipale
de Saint-Eustache
Saint-Eustache, Québec

Bibliothèque municipale
de Saint-Laurent
Saint-Laurent, Québec

Bibliothèque municipale
de Saint-Léonard
Saint-Léonard, Québec

Bibliothèque municipale de Saint-Luc
Saint-Luc, Québec

Bibliothèque municipale de Sainte-Foy
Sainte-Foy, Québec

Bibliothèque municipale
de Sainte-Thérèse
Sainte-Thérèse, Québec

Bibliothèque municipale de Sept-Iles
Sept-Iles, Québec

Bibliothèque municipale
de Shawinigan
Shawinigan, Québec

Bibliothèque municipale
de Sherbrooke
Sherbrooke, Québec

Bibliothèque municipale de Sorel
Sorel, Québec

Bibliothèque municipale
de St-Basile-le-Grand
St-Basile-le-Grand, Québec

Bibliothèque municipale de St-Hubert
St-Hubert, Québec

Bibliothèque municipale de St-Jérôme
St-Jérôme, Québec

Bibliothèque municipale de Terrebonne
Terrebonne, Québec

Bibliothèque municipale de Tracy
Tracy, Québec

Bibliothèque municipale de Val d'Or
Val d'Or, Québec

Bibliothèque municipale de Verdun
Verdun, Québec

Bibliothèque municipale de ville
de la Baie
Ville de la Baie, Québec

Bibliothèque municipale
Maison du Citoyen
Hull, Québec

Bibliothèque municipale Saul Bellow
Lachine, Québec

Bibliothèque nationale du Québec
Montréal, Québec

Bibliothèque nationale du Québec
Section des achats, dons et échanges
Montréal, Québec

Bibliothèque publique
Cap-de-la-Madeleine, Québec

Bibliothèque publique Côte Saint-Luc
Côte Saint-Luc, Québec

Bibliothèque publique de Asbestos
Asbestos, Québec

Bibliothèque publique de Pincourt
Pincourt, Québec

Bibliothèque Reginald J.P. Dawson
Mont Royal, Québec

Bibliothèque T.A. Saint-Germain
Saint-Hyacinthe, Québec

Bishop's University Library
Lennoxville, Québec

Campus Notre-Dame-de-Foy
Centre des médias
St. Augustin-de-Desmaures, Québec

Cégep André-Laurendeau
Centre de documentation
Lasalle, Québec

Cégep Beauce-Appalaches
Bibliothèque
St-Georges, Beauce, Québec

Cégep d'Alma
Centre des ressources éducatives
Alma, Québec

Cégep de Baie-Comeau
Hauterive, Québec

Cégep de Chicoutimi, Bibliothèque
Chicoutimi, Québec

Cégep de Drummondville
Drummondville, Québec

Cégep de Gaspésie, Bibliothèque
Gaspé, Québec

Cégep de Granby Haute-Yamaska
Granby, Québec

Cégep de Jonquière, Centre
des ressources éducatives
Jonquière, Québec

Cégep de l'Abitibi-Témiscamingue,
Bibliothèque
Rouyn-Noranda, Québec

Cégep de la Pocatière,
Bibliothèque François-Hertel
La Pocatière, Québec

Cégep de la région l'Amiante,
Bibliothèque
Thetford Mines, Québec

Cégep de Limoilou, Bibliothèque,
Québec, Québec

Cégep de Maisonneuve
Centre de médias
Montréal, Québec

Cégep de Matane,
Centre de documentation
Matane, Québec

Cégep de Rimouski, Bibliothèque
Rimouski, Québec

Cégep de Rivière-du-Loup
Rivière-du-Loup, Québec

Cégep de Rosemont, Bibliothèque
Montréal, Québec

Cégep de Saint-Jérôme, Bibliothèque
Saint-Jérôme, Québec

Cégep de Saint-Laurent, Bibliothèque
Saint-Laurent, Québec

Cégep de Sept-Iles, Bibliothèque
Sept-Iles, Québec

Cégep de Shawinigan, Bibliothèque
Shawinigan, Québec

Cégep de Sorel-Tracy, Bibliothèque
Tracy, Québec

Cégep de St-Hyacinthe,
Centre de documentation
Saint-Hyacinthe, Québec

Cégep de St-Jean-sur Richelieu,
Bibliothèque
St-Jean-sur Richelieu, Québec

Cégep de Ste-Foy, Centre de média
Ste-Foy, Québec

Cégep de Victoriaville,
Centre de documentation
Victoriaville, Québec

Cégep de Vieux Montréal,
Centre de documentation
Montréal, Québec

Cégep François-Xavier Garneau,
Centre des médias, Québec, Québec

Cégep John Abbott Collège, Library
Sainte-Anne-de-Bellevue, Québec

Cégep Joliette-de Lanaudière
Joliette, Québec

Cegep Marie Victorin
Montréal, Québec

Centre d'information documentaire
Côte-Saint-Germain
Drummondville, Québec

Centre régional de services aux
bibliothèques publiques de l'Outaouais
Gatineau, Québec

Centre régional de services
aux bibliothèques publiques
de la Montérégie
La Prairie, Québec

Centre régional de services aux
bibliothèques publiques Québec
Chaudière Appalaches
Charny, Québec

Champlain Regional College
Champlain-St. Lawrence Library
Ste-Foy, Québec

Champlain Regional College
St. Lambert-Longueuil Campus,
Resource Centre
Saint Lambert, Québec

Collège Ahuntsic, Centre de diffusion
Montréal, Québec

Collège André-Grasset,
Centre des Ressources Didactiques
Montréal, Québec

Collège de Bois-de-Boulogne
Montréal, Québec

Collège de Bourget, Bibliothèque
Rigaud, Québec

Collège de Jean Brébeuf,
Bibliothèque du cours collégial
Montréal, Québec

Collège de la Gaspésie et des Iles
Centre des Iles
Iles de la Madeleine, Québec

Collège de L'Assomption, Bibliothèque
L'Assomption, Québec

Collège de Lévis, Bibliothèque
Lévis, Québec

Collège de l'Outaouais, Bibliothèque
Hull, Québec

Collège de Sainte-Anne-de-la
Pocatière, Bibliothèque
La Pocatière, Québec

Collège de Sherbrooke,
Centre des médias
Sherbrooke, Québec

Collège de Valleyfield, Bibliothèque
Valleyfield, Québec

Collège Édouard-Montpetit,
Bibliothèque
Longueuil, Québec

Collège Jésus Marie, Bibliothèque,
Québec, Québec

Collège Lionel-Groulx, Bibliothèque
Sainte-Thérèse, Québec

Collège Montmorency, Bibliothèque
Laval, Québec

Concordia University Libraries **
Montréal, Québec

Concordia University
Vanier Library
Loyola Campus
Montréal, Québec

Dawson College Library
Westmount, Québec

École des hautes études
commerciales, Bibliothèque Myriam et
J.-Robert Ouimet
Montréal, Québec

École nationale d'administration
publique, Bibliothèque
Sainte-Foy, Québec

École nationale d'administration
publique, Centre de documentation
Montréal, Québec

École Polytechnique de Montréal,
Bibliothèque
Montréal, Québec

Heritage College, Library
Hull, Québec

Institut de Technologie agricole-
alimentaire de la Pocatière,
Centre de documentation
La Pocatière, Québec

Institut Nazareth et Louis-Braille,
Bibliothèque
Longueuil, Québec

Jewish Public Library
Montreal, Québec

La bibliothèque de Roxboro
Roxboro, Québec

L'Octogone centre de la culture
LaSalle, Québec

Marianopolis College Library
Montreal, Québec

McDonald College of McGill University
Faculty of Agriculture and
Environmental Sciences Library
Ste. Anne-de-Bellevue, Québec

McGill University **
Montreal, Quebec

McGill University
Howard Ross Library of Management
Montreal, Quebec

McGill University
Nahum Gelber Law Library
Montreal, Québec

Séminaire de Sherbrooke
Bibliothèque
Sherbrooke, Québec

Service de la bibliothèque de Laval
Laval, Québec

Services documentaires multimédia **
Publications officielles fédérales
Montréal, Québec

The Fraser-Hickson Institute
Montréal, Québec

Université de Laval
Faculté de droit , Québec, Québec

Université de Montréal
Bibliothèque de droit
Montréal, Québec

Université de Montréal
Bibliothèque de médecine vétérinaire
Saint-Hyacinthe, Québec

Université de Montréal **
Bibliothèque des sciences humaines
et sociales
Montréal, Québec

Université de Montréal
Bibliothèque Para-médicale
Montréal, Québec

Université de Sherbrooke **
Bibliothèque de Droit
Sherbrooke, Québec

Université du Québec à Chicoutimi,
Bibliothèque
Chicoutimi, Québec

Université du Québec à Hull,
Bibliothèque
Hull, Québec

Université du Québec à Montréal,
Bibliothèque **
Montréal, Québec

Université du Québec à Rimouski
Rimouski, Québec

Université du Québec à Trois-Rivières
Bibliothèque
Trois-Rivières, Québec

Université du Québec en
Abitibi-Témiscamingue, Bibliothèque
Rouyn-Noranda, Québec

Université Laval,
Bibliothèque générale **
Québec, Québec

Vanier College Library
Saint Laurent, Québec

Westmount Public Library
Westmount, Québec

Saskatchewan

Chinook Regional Library
Swift Current, Saskatchewan

Collège Mathieu, Bibliothèque
Gravelbourg, Saskatchewan

College of Notre Dame,
Lane Hall Memorial Library
Wilcox, Saskatchewan

Estevan Public Library
Estevan, Saskatchewan

John M. Cuelenaere Library
Prince Albert, Saskatchewan

Lakeland Library Region
North Battleford, Saskatchewan

Moose Jaw Public Library
Moose Jaw, Saskatchewan

Palliser Regional Library
Moose Jaw, Saskatchewan

Parkland Regional Library
Yorkton, Saskatchewan

Regina Public Library
Regina, Saskatchewan

Saskatchewan Institute of
Applied Science and Technology,
Palliser Library
Moose Jaw, Saskatchewan

Saskatchewan Legislative Library **
Regina, Saskatchewan

Saskatchewan Provincial Library
Regina, Saskatchewan

Saskatoon Public Library
Saskatoon, Saskatchewan

SIAST – Wascana Campus
Parkway Centre Library
Regina, Saskatchewan

Southeast Regional Library
Weyburn, Saskatchewan

St. Peter's Abbey and College, Library
Muenster, Saskatchewan

University of Regina Library
Regina, Saskatchewan

University of Saskatchewan Libraries **
Saskatoon, Saskatchewan

Wapiti Regional Library
Hudson Bay Branch
Prince Albert, Saskatchewan

Wapiti Regional Library
Humboldt Branch
Prince Albert, Saskatchewan

Wapiti Regional Library
Melfort Branch
Melfort, Saskatchewan

Wapiti Regional Library
Nipawin Branch
Prince Albert, Saskatchewan

Wapiti Regional Library
Tisdale Branch
Prince Albert, Saskatchewan

Weyburn Public Library
Weyburn, Saskatchewan

Yukon

Whitehorse Public Library
Whitehorse, Yukon

Yukon College Library
Whitehorse, Yukon

Australia

Australian National University
Canberra, A.C.T., Australia

Flinders University of South Australia
Adelaide, Australia

National Library of Australia
Canberra, A.C.T., Australia

Parliament of Australia
Department of the
Parliamentary Library
Parliament House
Canberra, A.C.T., Australia

State Library of Queensland
South Brisbane, Australia

State Library of Victoria
Melbourne, Australia

Belgium

Ambassade du Canada
Centre Culturel et Information
Bibliothécaire
Bruxelles, Belgium

Bibliothèque du Parlement
Palais de la Nation
Bruxelles, Belgium

Bibliothèque Royale Albert 1^{er}
Bruxelles, Belgium

Université Catholique de Louvain
Louvain-La-Neuve, Belgium

Université libre de Bruxelles
Bruxelles, Belgium

Brasil

Universidade de Saô Paulo
Saô Paulo – S.P., Brasil

Bulgaria

Kiril i Metodi Narodna
Sofia, Bulgaria

Croatia

Nacionalna i Suericilisna Knjiznica
Zagreb, Croatia

Denmark

Arhus Universitet
Statsbiblioteket
Tidsskriftafdelingen
Arhus C, Denmark

Federal Republic of Germany

Freie Universität Berlin
Universitätsbibliothek
Berlin, Federal Republic of Germany

Philipps – Universität Marburg
Universitätsbibliothek
Zeitschriftenakzession
Marburg/Lahn
Federal Republic of Germany

Staatsbibliothek zu Berlin
Preussischer Kurlturbesitz Abteilung
Berlin, Federal Republic of Germany

Universitätsbibliothek Augsburg
Augsburg, Federal Republic of Germany

Universität Trier
Trier, Federal Republic of Germany

Zentralbibliothek der
Wirtschaftswissenschaften
Kiel, Federal Republic of Germany

Fiji

University of the South Pacific
Suva, Fiji

Finland

Eduskunna Kirjasto
Library of Parliament
Helsinki, Finland

France

Ambassade du Canada
Bibliothèque
Paris, France

Bibliothèque Nationale de France
Paris, France

Chambre de Commerce France –
Canada
Paris, France

Université de Bordeaux I
Institut d'études Politiques
Centre d'études canadienne en
sciences sociales
Talence, France

Université de Bourgogne
Dijon, France

Université de Caen
Caen, France

Université de Grenoble
Centre d'Études Politiques
Institut d'Etudes Canadiennes
St. Martin Hères, France

Université de Lyon
Centre Jacques Cartier
Lyon, France

Université de Paris I
C.R.H.N.A.
Paris, France

Université de Poitiers
Poitiers, France

Université de Rouen
Institut pluridisciplinaire
des études canadiennes
Mont Saint Aignan, France

Germany

Deutscher Bundestag Bibliothek
Bonn, Germany

Greece

Library of Chamber of Deputies
Athens, Greece

India

Gokhale Institute of Politics
and Economics
Poona, India

National Library of India
Belvedere
Calcutta, India

Parliamentary Library Secretariat
New Delhi, India

Shastri Indo-Canadian Institute
New Delhi, India

Indonesia

Perpustakaan Dewan Perwakilan
Senajan Pintu 8 (Jakarta)
Indonesia

Israel

Library of the Knesset
Jerusalem, Israel

Italy

Camera dei Deputati
Roma, Italie

Università di Bologna
Bologna, Italie

Jamaica

The University of the West Indies
Kingston, Jamaica

Japan

Aoyama Gakuin University
School of International Politics,
Economics and Business
Tokyo, Japan

Hokkaido University Library
Sapporo, Japan 060

Keio University
Tokyo, Japan

Kwansei Gakuin University
Hyâgo – Ken, Japan

National Diet Library **
Tokyo, Japan

Tsukuba University
Library
Tsukuba-Shi, Ibaraki-ken
305 Japan

University of Tokyo
Library
Tokyo, Japan

Kenya

University of Nairobi
Nairobi, Kenya

Malaysia

The National Library of Malaysia
Kuala Lumpur, Malaysia

Mexico

Biblioteca Nacional de Mexico
Mexico DF, Mexico

Nederland

Bibliotheek der Rijksuniversiteit
Utrecht, Nederland

Bibliotheek der Rijksuniversiteit Leiden
Leiden, Netherlands

New Zealand

Parliamentary Library
Wellington, New Zealand

University of Canterbury
Christchurch, New Zealand

Nigeria

National Library of Nigeria
Logos, Nigeria

Norway

Nasjonalbiblioteket
Oslo, Norway

Stortingsbiblioteket
Stortinget
Oslo, Norway

People's Republic of China

National Library of Beijing
Haiden District Beijing
People's Republic of China

Polska (Poland)

Biblioteka Sejmowa
Dzial Documentacji Parlamentarnej
Warszawa, Polska (Poland)

Portugal

Biblioteca Nacional-Lisboa
Servicio Portugês Trocas
Lisboa, Portugal

Republic of Ireland

National University of Maynooth
Maynooth, Republic of Ireland

Oireachtas Library
Dublin, Republic of Ireland

Republic of Korea

National Library of Korea
Seoul, Republic of Korea

Republic of South Africa

National Library of South Africa
Pretoria, Republic of South Africa

Romania

Biblioteca Centrala de Stat
Servicul Schimb cu Stainstatea
Bucarest, Romania

Russia

Parlamentskaya
Biblioteka Rf
Moscow, Russia

Russian Federation

Russian State Library
Moscow, Russian Federation

Singapore

National University of Singapore
Library
Singapore, Singapore

South Korea

Yonsei University
Centre for Canadian Studies
Seoul, South Korea

Spain

Biblioteca Nacional
Madrid, Spain

Universidad Autonoma de Barcelona
Bellaterra, Spain

Sri Lanka

University of Sri Lanka Library
Peradeniya, Sri Lanka

Switzerland

Bureau International du Travail
Genève, Switzerland

ETH Bibliothek
Zürich, Switzerland

Office des Nations Unies à Genève
Palais des Nations
Genève, Switzerland

Université de Lausanne
Bibliothèque cantonale et universitaire
Lausanne, Switzerland

Sweden

Riksdagsbiblioteket
Stockholm, Sweden

Tanzania

University of Dar Es Salaam
Dar Essalaam, Tanzania

The Netherlands

State University of Groningen
Groningen, The Netherlands

United Kingdom

Cambridge University Library
Cambridge, United Kingdom

Edinburgh University Library
Edinburgh, United Kingdom

Exeter University Library
Exeter, United Kingdom

House of Commons Library
International Affairs
London, United Kingdom

Oxford University
Rhodes House Library
Oxford, United Kingdom

Queen's University of Belfast
Belfast, United Kingdom

University of Birmingham
Birmingham, United Kingdom

University of Leeds
Leeds, United Kingdom

University of London
Institute of Commonwealth Studies
Library
London, United Kingdom

University of London
British Library of Political and
Economic Science
London, United Kingdom

University of Newcastle Upon Tyne
Newcastle Upon Tyne, United Kingdom

University of Wales, Aberystwyth
Dyfed, United Kingdom

British Library **
West Yorkshire, United Kingdom

United States of America

Alaska State Library
Juneau, United States of America

Boise State University
Boise, United States of America

Bridgewater State College
Bridgewater, United States of America

Brigham Young University
Provo, United States of America

California State University, Sacramento
Sacramento, United States of America

Canadian Consulate General
Consulat général du Canada

Library / Bibliothèque
New York, United States of America

Canadian Embassy Library
Ambassade du Canada Bibliothèque
Washington, D.C.,
United States of America

Case Western Reserve University
Cleveland, United States of America

Dartmouth College
Hanover, United States of America

Duke University
Durham, United States of America

Harvard University
Cambridge, United States of America

John Hopkins University
School of Advanced
International Studies
Washington, D.C.,
United States of America

Library of Congress **
Washington, D.C.,
United States of America

Michigan State University
East Lansing, United States of America

Montana State University
Bozeman, United States of America

New York Public Library Division E
Grand Central Station
New York, United States of America

New York State Library
Albany, United States of America

Northwestern University
Evanston, United States of America

Pennsylvania State University
University Park,
United States of America

State Historical Society of Wisconsin
Madison, United States of America

State University of New York at Buffalo
Buffalo, United States of America

St. Lawrence University
Canton, United States of America

United Nations
Dag Hammarskjold Library
New York, United States of America

University of Arizona Library
Tucson, United States of America

University of California at Los Angeles
Los Angeles, United States of America

University of California
Berkeley, United States of America

University of Chicago
Chicago, United States of America

University of Georgia Libraries
Athens, United States of America

University of Illinois at
Urbana-Champaign
Urbana, United States of America

University of Kentucky Libraries
Lexington, United States of America

University of Maine
Orono, United States of America

University of Massachusetts at Amherst
Amherst, United States of America

University of Michigan
Ann Arbor, United States of America

University of Minnesota
Minneapolis, United States of America

University of New Hampshire Library
Durham, United States of America

University of New York State
Plattsburgh, United States of America

University of Oregon Library
Eugene, United States of America

University of Pittsburgh
Pittsburgh, United States of America

University of Southern California
Los Angeles, United States of America

University of Texas at Austin
Lyndon B. Johnson School
of Public Affairs
Austin, United States of America

University of Vermont
Burlington, United States of America

University of Virginia
Charlottesville,
United States of America

University of Washington Libraries
Seattle, United States of America

Western Washington University
Bellingham, United States of America

Yale University Library
New Haven, United States of America

Uruguay

Biblioteca del Palacio Legislativo
Montevideo, Uruguay

Venezuela

Biblioteca Nacional
Caracas, Venezuela

Zimbabwe

University of Zimbabwe
Harare, Zimbabwe