



Government
of Canada

Gouvernement
du Canada

Bulletin

Info --- Source

Access to
Information Act

Privacy Act

Number 21
Summer 1998

Canada

Archived

© Minister of Public Works and Government Services
Catalogue No. BT 51-3/10-2-1998
ISSN 1187-1741

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

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**STATISTICAL
TABLES
1997-1998
ACCESS TO
INFORMATION**

Access to Information – 1997-1998

Disposition of Requests

| | | |
|---|---------------|---------------|
| Requests received | | 12,206 |
| Requests completed | 100.0% | 12,030 |
| (Includes requests brought forward from previous year) | | |
| Disposition of requests completed: | | |
| All disclosed | 33.9% | 4,080 |
| Some disclosed | 35.7% | 4,294 |
| No records disclosed – excluded | 0.8% | 95 |
| No records disclosed – exempted | 2.9% | 353 |
| Transferred | 1.7% | 206 |
| Treated informally | 3.9% | 464 |
| Could not be processed | 21.1% | 2,538 |
| (Reasons include insufficient information provided by applicant, no records exist and abandonment by applicant) | | |

Access to Information – 1997-1998
Source of Requests

| | | |
|--------------------------|---------------|---------------|
| Requests received | 100.0% | 12,206 |
| Business | 41.1% | 5,020 |
| Public | 37.7% | 4,606 |
| Organizations | 12.5% | 1,522 |
| Media | 7.7% | 935 |
| Academics | 1.0% | 123 |

Access to Information – 1997-1998
Ten Institutions Receiving Most Requests

| | | |
|--|---------------|---------------|
| Requests received by all institutions | 100.0% | 12,206 |
| Citizenship and Immigration | 13.5% | 1,642 |
| National Archives | 13.0% | 1,569 |
| Health | 9.1% | 1,114 |
| National Defence | 7.1% | 861 |
| Public Works and Government Services | 6.4% | 778 |
| Revenue | 4.3% | 527 |
| Royal Canadian Mounted Police | 4.1% | 507 |
| Fisheries and Oceans | 3.4% | 425 |
| Human Resources Development | 2.8% | 345 |
| Transport | 2.6% | 321 |
| Other Departments | 33.7% | 4,117 |

Access to Information – 1997-1998
Time Required to Complete Requests

| | | |
|--------------------|--------|--------|
| Requests completed | 100.0% | 12,030 |
| 0 – 30 days | 50.7% | 6,099 |
| 31 – 60 days | 17.4% | 2,099 |
| 61 + days | 31.9% | 3,832 |

Access to Information – 1997-1998
Exemptions

| | | |
|---|--------|-------|
| Total exemptions | 100.0% | 9,624 |
| Section 19 – Personal information | 32.0% | 3,076 |
| Section 20 – Third party information | 23.0% | 2,214 |
| Section 21 – Operations of government | 11.8% | 1,136 |
| Section 16 – Law enforcement and investigations | 8.2% | 788 |
| Section 23 – Solicitor-client privilege | 5.8% | 559 |
| Section 13 – Information obtained in confidence | 5.5% | 535 |
| Section 15 – International affairs and defence | 5.0% | 485 |
| Section 14 – Federal-provincial affairs | 2.9% | 276 |
| Section 24 – Statutory prohibitions | 1.7% | 163 |

| | | |
|--|------|-----|
| Section 18 – Economic interests of Canada | 1.7% | 159 |
| Section 26 – Information to be published | 1.4% | 138 |
| Section 17 – Safety of individuals | 0.5% | 51 |
| Section 22 – Testing procedures | 0.5% | 44 |

Access to Information – 1997-1998
Costs and Fees for Operations

| | |
|--------------------------------------|--------------|
| Requests completed | 12,030 |
| Cost of operations | \$12,062,071 |
| Cost per request completed | \$1,003 |
| Fees collected | \$190,703 |
| Fees collected per request completed | \$15.85 |
| Fees waived | \$98,878 |
| Fees waived per request completed | \$8.22 |

**STATISTICAL
TABLES
1997-1998
PRIVACY**

Privacy – 1997-1998
Disposition of Requests

| | | |
|---|--------|--------|
| Requests received | | 37,296 |
| Requests completed | 100.0% | 36,114 |
| (Includes requests brought forward from previous year) | | |
| Disposition of requests completed: | | |
| All disclosed | 61.7% | 22,284 |
| Some disclosed | 25.3% | 9,120 |
| No records disclosed – excluded | 0.0% | 10 |
| No records disclosed – exempted | 0.9% | 337 |
| Could not be processed | 12.1% | 4,363 |
| (Reasons include insufficient information provided by applicant, no records exist and abandonment by applicant) | | |

Privacy – 1997-1998

Five Institutions Receiving Most Requests

| | | |
|--|---------------|---------------|
| Requests received by all institutions | 100.0% | 37,296 |
| National Defence | 33.9% | 12,669 |
| Correctional Service | 15.0% | 5,596 |
| Human Resources Development | 14.0% | 5,236 |
| Citizenship and Immigration | 10.0% | 3,762 |
| National Archives | 9.1% | 3,414 |
| Other Departments | 18.0% | 6,619 |

Privacy – 1997-1998

Time Required to Complete Requests

| | | |
|---------------------------|---------------|---------------|
| Requests completed | 100.0% | 36,114 |
| 0 – 30 days | 56.0% | 20,190 |
| 31 – 60 days | 22.4% | 8,090 |
| 61 + days | 21.6% | 7,834 |

Privacy – 1997-1998
Exemptions

| | | |
|--|---------------|---------------|
| Total exemptions | 100.0% | 15,161 |
| Section 26 – Information about another individual | 57.0% | 8,645 |
| Section 22 – Law enforcement and investigation | 22.2% | 3,369 |
| Section 19 – Personal information obtained in confidence | 11.2% | 1,694 |
| Section 24 – Individuals sentenced for an offence | 3.1% | 466 |
| Section 27 – Solicitor-client privilege | 2.8% | 430 |
| Section 21 – International Affairs and defence | 2.1% | 322 |
| Section 18 – Exempt banks | 0.5% | 72 |
| Section 23 – Security clearances | 0.4% | 63 |
| Section 25 – Safety of individuals | 0.4% | 57 |
| Section 20 – Federal-provincial affairs | 0.2% | 35 |
| Section 28 – Medical records | 0.1% | 8 |

Privacy – 1997-1998
Costs and Fees for Operations

| | |
|----------------------------|---------------|
| Requests completed | 36,114 |
| Cost of operations | \$9,264,073 |
| Cost per request completed | \$257 |

**STATISTICAL
TABLES
1983-1998
ACCESS TO
INFORMATION**

Access to Information – 1983-1998
Disposition of Requests

| | | |
|---|--------|---------|
| Requests received | | 131,474 |
| Requests completed | 100.0% | 127,232 |
| (Includes requests brought forward from previous year) | | |
| Disposition of requests completed: | | |
| All disclosed | 33.3% | 42,415 |
| Some disclosed | 35.2% | 44,827 |
| No records disclosed – excluded | 0.7% | 877 |
| No records disclosed – exempted | 3.4% | 4,280 |
| Transferred | 2.1% | 2,705 |
| Treated informally | 6.0% | 7,596 |
| Could not be processed | 19.3% | 24,532 |
| (Reasons include insufficient information provided by applicant, no records exist and abandonment by applicant) | | |

Access to Information – 1983-1998
Time Required to Complete Requests

| | | |
|---------------------------|---------------|----------------|
| Requests completed | 100.0% | 127,232 |
| 0 – 30 days | 57.1% | 72,682 |
| 31 – 60 days | 18.1% | 22,926 |
| 61 + days | 24.8% | 31,624 |

Access to Information – 1983-1998
Costs and Fees for Operations

| | |
|--------------------------------------|----------------|
| Requests completed | 127,232 |
| Cost of operations | \$110,916,502 |
| Cost per request completed | \$1,861 |
| Fees collected | \$1,802,453 |
| Fees collected per request completed | \$29.84 |
| Fees waived | \$616,074 |
| Fees waived per request completed | \$12.71 |

**STATISTICAL
TABLES
1983-1998
PRIVACY**

Privacy – 1983-1998
Disposition of Requests

| | | |
|---|--------|----------------|
| Requests received | | 629,330 |
| Requests completed | 100.0% | 621,010 |
| (Includes requests brought forward from previous year) | | |
| Disposition of requests completed: | | |
| All disclosed | 62.0% | 385,328 |
| Some disclosed | 23.8% | 147,738 |
| No records disclosed – excluded | 0.1% | 104 |
| No records disclosed – exempted | 0.8% | 5,357 |
| Could not be processed | 13.3% | 82,483 |
| (Reasons include insufficient information provided by applicant, no records exist and abandonment by applicant) | | |

Privacy – 1983-1998

Time Required to Complete Requests

| | | |
|---------------------------|---------------|----------------|
| Requests completed | 100.0% | 621,010 |
| 0 – 30 days | 60.0% | 372,508 |
| 31 – 60 days | 22.0% | 137,192 |
| 61 + days | 18.0% | 111,310 |

Privacy – 1983-1998

Costs and Fees for Operations

| | |
|----------------------------|----------------|
| Requests completed | 621,010 |
| Cost of operations | \$98,216,078 |
| Cost per request completed | \$409 |

FEDERAL COURT CASES

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

**SNC-LAVALIN INC. V. CANADA
(MINISTER OF PUBLIC WORKS)**

File Nos.: T-916-92
T-1133-92

Reference(s): (1994), 79 F.T.R. 113 (F.C.T.D.)

Date of Decision: June 29, 1994

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

Section(s) of *ATIA* / *PA*: Ss. 20(1)(b), (c), (d), 25, 44(1)
Access to Information Act (ATIA)

Abstract

- Third party information
- *ATIA* s. 44 review of decision to disclose
- Extension of time to file a s. 44(1) application
- Judicial discretion
- Ability to amend an application
- Confidential information
- Reasonable expectation of probable harm
- Reasonable severance
- *Federal Court Rules* 2(2), 5, 303, 421, 422, 424, 427
- *Federal Court Act* ss. 2, 18.1(2), 46

Issues

- (1) Was the notice of motion in T-1133-92 relating to the Proposal out of time and therefore not properly before the Court?
- (2) Did the amendment of T-916-92 and its supporting affidavit cure the defect of failing to apply within the prescribed time for review of the decision to disclose the Proposal?
- (3) Did the amended notice of motion contain information that is confidential *as per* para. 20(1)(b)?
- (4) Were the Record and the Proposal exempt from disclosure under paras. 20(1)(c) and (d) *ATIA*?
- (5) How should the Proposal be severed?

Facts

Lavalin entered a proposal in 1988 to bid on the fixed link between New Brunswick and Prince Edward Island. Fifteen volumes of documents concerning mostly a proposal for a bridge link were submitted to Public Works Canada (PWC) which can be referred to collectively as the “Proposal”. Another record sent to PWC was an evaluation report (the “Record”) relating to the applicant’s proposed tunnel solution. Lavalin’s proposals were unsuccessful.

“Record”

On March 3, 1992 the Access to Information Co-ordinator of PWC wrote to Lavalin and advised that the Record was a record which was subject to an access to information request.

The letter indicated that the Record might contain subs. 20(1) *ATIA* information but that they did not have sufficient information to substantiate this and that the Department would disclose the Record if written representations were not received within 20 days from the receipt of the notice.

By letter on March 19, 1992, Lavalin opposed disclosure based on subss. 20(1) and 27(1). On March 30, 1992, PWC wrote to Lavalin to advise that the Record would be disclosed.

On April 21, 1992 Lavalin applied to the Court pursuant to s. 44 of the *ATIA* for a judicial review of PWC's decision on the Record's release. **This was Court File No. T-916-92.**

"Proposal"

On March 10, 1992 the Access to Information Co-ordinator of PWC wrote to Lavalin and advised that the Proposal was a record which was subject to an access to information request. The letter indicated that the Proposal might contain paras. 20(1)(a) to 20(1)(d) *ATIA* information but that PWC did not have sufficient information to substantiate this and that the Department would disclose the Proposal if written representations were not received within 20 days from the receipt of the notice.

By letter on March 19, 1992, Lavalin opposed disclosure based on subss. 20(1) and 27(1) of the *ATIA*.

On April 9, 1992 PWC wrote to Lavalin to advise that the Proposal would be disclosed.

On May 4, 1992 Lavalin wrote to PWC and indicated that they would be making a s. 44 application. They requested that no action be taken to disclose the material until the matter was resolved by the Court or by agreement of the parties.

On May 15, 1992 the application for judicial review of PWC's decision was filed with the Court, 24 days after the letter of April 9, 1992 was received by Lavalin on April 21, 1992. **This was Court File No. T-1133-92.**

Amended Notice of Motion

On August 25, 1993 Lavalin filed an amended notice of motion and a supplementary affidavit in Court File T-916-92. The amended notice of motion incorporated a review of the same matters, requested the same relief, and set out the same grounds, as found in Court File T-1133-92. Lavalin did not seek leave to amend the original notice of motion but simply filed the amended document with the supplementary affidavit. PWC did not make application to challenge the amendment of the notice of motion.

Decision

The application in Court File T-1133-92 and the amended notice of motion in Court. File T-916-92 were dismissed.

Reasons

Issue 1

PWC argued that since subs. 44(1) only makes provision for a review to be filed within 20 days from the date the s. 28 notice

was received, Lavalin was out of time to file the application. PWC also argued that since there was no filed application for an extension of time, the Court has no discretion to extend time where the process does not so provide.

Lavalin argued that subs. 44(1) is permissive and does not state that an application must be filed within 20 days, but rather, that the limitation period allowed the Department to disclose information after the 20-day period up until the time that an application for review is filed.

The Court found that the purpose of the Act was to provide access to information when requested, except for specified exceptional cases, and in a timely fashion, to the requester. Following that purpose, the Court found that the time limit fixed by subs. 44(1) must, in the ordinary course, be construed strictly. In the ordinary case, the Court has no discretion under the Act to extend the time for filing or to consider an application filed late. The Court noted, however, that it may have discretion to consider matters in an exceptional case. In this case it was noted that there was neither an application for an extension of time, nor an argument that this case was an exceptional case. The application in Court File No. T-1133-92 was therefore dismissed.

Issue 2

The Court disagreed with Lavalin's submission that Federal Court Rules 421 and 422 authorise the amendment to the notice of motion. The Court found that those Rules apply only to actions and not to applications. The Court, however,

disagreed with PWC's submission that it cannot allow an amendment to an application or a notice of motion. The Court found that the absence of a provision in the *ATIA* for an extension of time to apply under subs. 44(1), or for an amendment of an application that was filed within the prescribed time, after that time has elapsed, is not a bar to the exercise of the Court's discretion to permit either course, upon application, where that is necessary "to ensure the proper working of that Act [*ATIA*], and the better attainment of its objects". In such a case, the Court acting in accord with Rule 5, may provide for an extension of time, by analogy to what it may do in regard to a regular application for judicial review under subs. 18.1(2) of the *Federal Court Act*, and Rule 1614. Similarly, in an appropriate case, the Court may allow an amendment to the original application under subs. 44(1), by analogy to the provisions set out in Rules 424 and 427. The vehicle for the Court to exercise its discretion to either allow an application for an extension of time or to allow an amendment to an existing application was found to be Federal Court Rules 303 and 2(2).

In this case the Court did not allow the amendment of the notice of motion as it related to the Proposal because leave was not sought to amend the application, and no representations were made that permitting a review would serve to "ensure the proper working of that Act [*ATIA*] and the better attainment of its objects." It is necessary to illustrate how a review would ensure the proper workings of the Act in order to substantiate that a case is exceptional and warrants the exercise of discretion.

Issue 3

Both the Proposal and the Record were reviewed in light of the standard for confidential information within para. 20(1)(b) as set out in *Air Atonabee Ltd. v. Canada (Minister of Transport)* (1989), 27 F.T.R. 194 (F.C.T.D.) at p. 210, that is,

- (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 independently 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.

The Court was satisfied that the last two requirements were met. However, it was not satisfied that all of the information in the Proposal was available only from the applicant and not from sources otherwise accessible to the public. Some of the Proposal information would qualify as not being otherwise available to the public, and some of the Proposal information would not. The Court dealt with this by severing the information.

Issue 4

The onus was on Lavalin to establish a reasonable expectation of probable harm to exempt the records from disclosure as set out in *Canada Packers Inc. v. Canada (Minister of Agriculture)*, [1989] 1 F.C. 47 (T.D.). The Court found that it was not self-evident from the documents themselves that the applicant had demonstrated a basis for a reasonable expectation of probable harm. The applicant did not demonstrate probable harm as a result of the disclosure of the Record or the Proposal simply by affirming by affidavit that disclosure “would undoubtedly interfere with contractual and other negotiations with SNC-Lavalin in future business dealings”. These affirmations were the very findings that the Court must make if paras. 20(1)(c) and 20(1)(d) are to apply. Without further explanation based on evidence that establishes that 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. Therefore, the Record and Proposal were not exempt from disclosure pursuant to para. 20(1)(c) or para. 20(1)(d) of the *ATIA*.

Issue 5

Portions of the Proposal were exempt from disclosure under para. 20(1)(b) of the *ATIA*. PWC had an obligation, pursuant to s. 25 of the *ATIA*, to disclose any part of the Proposal that did not contain, and could reasonably be severed from any part that did contain, information described in para. 20(1)(b) that it was required to refuse to disclose. Some portions, especially of the financial aspects of the Proposal, appeared to clearly

be confidential. Section 20 imposes an obligation on the government institution to refuse to disclose that information. An institution fails to discharge its obligation when it places on the third party the onus of establishing that the information should not be disclosed, where the information, on its face, is clearly confidential. While it is true that on review under subs. 44(1) the burden is on the applicant seeking to restrain disclosure, the actual responsibility to refuse to disclose the information under s. 20 is that of the head of the institution.

The Court referred to *Canada (Information Commissioner) v. Canada (Solicitor General)*, [1988] 3 F.C. 551 (T.D.) noting that “disconnected snippets of releasable information taken from otherwise exempt passages are not...reasonably severable” and severance should be attempted only when the result is a reasonable fulfilment of the purposes of the Act. The Court also accepted the comments in *Montana Indian Band v. Canada (Minister of Indian Affairs and Northern Development)*, (1988), 18 F.T.R. 15 (F.C.T.D.) at pp. 26-27 wherein it was said that where severance would result in release of minimal portions of the information in question and would result only in release of information otherwise available from published public sources, or where the information left to be released is not a reasonable response to the request for information in light of the portions exempt, severance has been found not to be reasonable, and thus not required within s. 25.

As regards the Proposal, the financial statements submitted to PWC in a sealed envelope were not to be disclosed. Volume 5 concerning the financial plan appears to have been specially treated by Lavalin, so aside from the published financial and

annual reports of associated public companies, it qualifies as confidential financial information within para. 20(1)(b). Similarly, Exhibits “N” and “E” which relate directly or indirectly to the confidential financial status of Lavalin are exempt from disclosure.

As regards the Record, while it may be unflattering to Lavalin there is nothing on the face of the Record that would lead one to conclude that any of the information included in it is confidential by any objective measure.

Comments

1. This decision should be compared with *Bearskin Lake Air Service v. Canada (Department of Transport)* (1996), 119 F.T.R. 282 (F.C.T.D.), which held that the Federal Court does not have jurisdiction to extend the time for filing a subs. 44(1) application once the 20-day period has expired.
2. See also *J.M. Schneider Inc. v. R.* (1986), 12 C.P.R. (3d) 90 (F.C.T.D.) which held that the *ATIA* does not provide for an extension of the time prescribed under s. 44.

TRIDEL CORP. V. CANADA MORTGAGE AND HOUSING CORP.

| | |
|---|---|
| File No.: | T-847-91 |
| References: | (1996), 115 F.T.R. 185 (F.C.T.D.) |
| Date of Decision: | May 13, 1996 |
| Before: | Campbell J. (F.C.T.D.) |
| Section(s) of <i>ATIA</i> / <i>PA</i> : | Ss. 2, 20(1)(b), (c), (d), 27, 44(1) <i>Access to Information Act (ATIA)</i> and 3(a), (b), (c), (d), (e) <i>Privacy Act (PA)</i> |

Abstract

- Third party information
- Application under s. 44 *ATIA* to review decision to disclose
- Applicability of ss. 20(1)(b), (c), (d) *ATIA*
- Reasonable expectation of probable harm
- Mistake of fact scenario
- Jurisdiction of Court under s. 44 *ATIA*
- S. 27 *ATIA* notice to third parties
- Ss. 2(d), 7, 11(a) and (d) *Canadian Charter of Rights and Freedoms*

Issues

- (1) Who bears the burden under an application made pursuant to subs. 44(1) of the *ATIA*?

- (2) Is the Court's role under a subs. 44(1) review limited to a determination as to the applicability of the exemptions set out in subs. 20(1) of the *ATIA* or can it entertain additional grounds raised by a subs. 44(1) applicant?
- (3) Did Tridel Corp. qualify as an identifiable individual such as to attract the subs. 19(1) *ATIA* protection?
- (4) Did the information contained in the record constitute confidential information supplied to a government institution by a third party and was that information treated consistently in a confidential manner by the third party?
- (5) Did Tridel meet the reasonable expectation of probable harm test set out in paras. 20(1)(c) and (d)?
- (6) Was Tridel's argument that the failure to notify the organizations named in the record vitiated the decision to disclose and was contrary to the principles of natural justice well founded?
- (7) Could the record be found unconstitutional given the unconstitutionality of the Houlden Inquiry?
- (8) Would disclosure of the record constitute a breach of paras. 2(d), 11(a) and (d) and s. 7 of the *Canadian Charter of Rights and Freedoms*?

Facts

This case deals with an application by Tridel Corp. under subs. 44(1) of the *ATIA* for an order prohibiting the release of a record which consists of a letter and two appendices. The record purports to be a special audit conducted by Canada

Mortgage and Housing Corp. (CMHC) into Tridel's business activities. It contains opinions from the Operations Audit Division of CMHC as well as a "List of Tridel Projects".

CMHC argues that the information contained in the record it proposes to release was not financial information, was not provided in confidence by Tridel and did not contain information relating to Tridel officers and executives.

Tridel's arguments focussed on the harm it would suffer should the record be released. That harm, it was argued, would result from the linkage of the record to the Houlden Inquiry. That Commission of Inquiry, known as the Houlden Inquiry, was appointed in 1989 to inquire into alleged improprieties involving the chairperson of a section of a registered charitable organization and Tridel Corp. Allegations had been made that public funds, which were to be used to build or subsidize housing for the disabled, the elderly and the poor were diverted by a Liberal fund raiser into a "slush fund". There were also allegations of association between the chairperson and Tridel Corp. The Houlden Inquiry was declared unconstitutional by the Supreme Court of Canada in 1990 (*Starr v. Houlden*, [1990] 1 S.C.R. 1366).

Decision

The application to prohibit the release of the record was rejected.

Reasons

Issue 1

The issue of who bears the burden has been settled by Jerome A.C.J. in *Maislin Industries Ltd. v. Minister for Industry, Trade and Commerce*, [1984] 1 F.C. 939 (T.D.) in the following terms (at p. 943): "... the burden of persuasion must rest upon the party resisting disclosure whether, as in this case, it is the private corporation or citizen, or in other circumstances, the Government".

Issue 2

The Court can entertain the additional grounds raised by the applicant [those additional grounds are set out in issues 6, 7 and 8 below]. In reaching this conclusion, the Court interpreted the following passage of Hugessen J.A.'s judgment in *Saint John Shipbuilding Ltd. v. Canada (Minister of Supply and Services)* (1990), 107 N.R. 89 (F.C.T.D.) at p. 91: "...the appellant's interest, as third party intervenor in a request for information, is limited to those matters set out in s. 20(1), and it has no status to object that the Government may have given more or less than it was asked for". The Court was not convinced that that passage could be extended to restrict the arguments on fact and law that can be made regarding the proposed release of particular information.

Issue 3

Tridel's argument that it qualifies as an identifiable individual thus attracting the protection of subs. 19(1) of the *ATIA* was rejected. The words "identifiable individual" mean a human

being, since it is only a human being that can possess all the very personal characteristics and experiences enumerated in paras. 3(a), (b), (c), (d) and (e) of the *Privacy Act*. The small groups to which Jerome A.C.J. referred in *Montana Band of Indians v. Canada (Minister of Indian and Northern Affairs)* (1988), 18 F.T.R. 15 (F.C.T.D.) were composed of people and the comment made by Jerome A.C.J. (at p. 22) to the effect that “...information about small groups may, in some cases, constitute personal information” was made in the context of an argument that Band financial statements should be considered personal information of each member of the Band.

Issue 4

The opinions contained in the letter were opinions from CMHC related to an audit it had conducted. Therefore, they were not opinions supplied to a government institution **by a third party** as that term is defined in s. 2 of the *ATIA*.

The information contained in the List of Tridel Projects had not been supplied by Tridel. That list was based on information given by companies and charitable foundations who had applied for CMHC subsidies. Even if third party could be interpreted to include the applicants for CMHC assistance, (1) the names of the builders of the projects which appear on the list could not qualify as “financial, commercial, scientific or technical information” “as those terms are commonly understood” which is the test defined by MacKay J. in *Air Atonabee v. Canada (Minister of Transport)* (1989), 27 F.T.R. 194 (F.C.T.D.) at p. 208; (2) the Court was unable to find, on a

balance of probabilities, that the information provided by the applicants for CMHC assistance was confidential and had been treated consistently in a confidential manner by them.

Issue 5

The reasonable expectation of probable harm test set out in paras. 20(1)(c) and (d) was not met.

With respect to para. 20(1)(c), the concerns expressed by Tridel were related to the release in 1990 of a document other than the record at issue. Whatever damage the 1990 release caused occurred six years ago and Tridel's submission that it would not like any more notoriety is not sufficient to meet the evidentiary requirements of para. 20(1)(c).

Tridel's additional argument, which was based on a mistake of fact scenario, was not indicative of probable harm. On each s. 20 ground, the factual basis for an objection has to be proven first, then the decision made as to whether, on the facts found, the requirements of the ground are met. Tridel's concern was that the coining of the projects by CMHC as "Tridel projects" would lead to a wrongful conclusion about Tridel's involvement because Tridel Corp. was, in fact, distinct in the corporate sense from the actual builders. The Court found that the alleged inaccuracies had not been proven. All CMHC could do in its efforts to investigate was to use the facts which had been supplied to it. The applications from which the information was obtained were formal documents which CMHC was entitled to rely upon as containing truthful

statements. The record showed that CMHC had done a great deal to further investigate the connection of Tridel Corp. to the “builders” but without much success.

With respect to para. 20(1)(d), Tridel’s belief that it would encounter difficulties in obtaining financing from other lenders or third parties was completely unsubstantiated.

Issue 6

The Court held that Tridel had no standing on a s. 44 application to initiate a review of the interests of other unserved parties including the issue of whether they should have been served. It was Tridel’s interests that were under review. Whose interests were under review in other applications or who had not been served so that a review of their interest could be initiated was not a concern which properly arose here.

Issue 7

The determination of the issue of constitutionality turned on the following question: why and for what purpose had the record been prepared. The evidence clearly showed that the report had not been prepared as the result of the Houlden Inquiry but in light of allegations of improper handling of sales tax rebates on social housing projects for which CMHC had provided funding. The special audit was conducted in the normal course of CMHC business.

Issue 8

Tridel's argument based on para. 2(d) of the *Charter* – freedom of association – was rejected. (1) The record did not prohibit Tridel from associating with any of the organizations listed therein; (2) what people might think as a result of the release of the record does not infringe on anyone's freedom of association; (3) to the extent that any association existed between Tridel and the organizations listed in the record, the associations pre-existed the record and were simply reported in the record.

The argument based on s. 7 of the *Charter* to the effect that the disclosure of the record, in conjunction with the public mandate of the Houlden Inquiry, would place into question the morality of those individuals associated with the named entities in the record, was rejected. Only human beings can avail themselves of the protection of s. 7 except in the case of a corporation charged with a criminal offence, which was not the case here.

Finally, the Court found against Tridel on the grounds raised with respect to paras. 11(a) and (d) of the *Charter* as Tridel was not facing any criminal proceedings at the time.

**BEARSKIN LAKE AIR SERVICE V. CANADA
(DEPARTMENT OF TRANSPORT)**

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| File No.: | T-43-96 |
| References: | (1996), 119 F.T.R. 282 (F.C.T.D.) |
| Date of Decision: | August 28, 1996 |
| Before: | Richard J. (F.C.T.D.) |
| Section(s) of <i>ATIA</i> / <i>PA</i> : | S. 44(1) <i>Access to Information Act (ATIA)</i> |

Abstract

- S. 44 *ATIA* review of decision to disclose
- Extension of time to file an application under s. 44 *ATIA*

Issue

Does the Federal Court have jurisdiction to waive or extend the time period to file an application under s. 44 of the *ATIA* ?

Facts

On March 13, 1996, Bearskin Lake Air Service received, under para. 28(1)(b), notice of a decision to disclose a record. Bearskin Lake did not file its s. 44 application until April 11, 1996, nine days late. It subsequently applied for leave for judicial review of the disclosure decision.

Decision

The application for leave was dismissed.

Reasons

The statutory period under subs. 44(1) of the *ATIA* is a strict one and there is no jurisdiction of the Federal Court to waive or extend the time.

Richard J. indicated that he was bound by three decisions of the Federal Court of Appeal which arose out of the *Customs Act*. These cases specifically dealt with a situation where a motion for an extension of time was filed after the expiration of the period of time prescribed in a statute and where the Court was not specifically authorized by the statute to extend the time.

Richard J. noted the decision of this Court in *SNC-Lavalin Inc. v. Canada (Minister of Public Works)* (1994), 79 F.T.R. 113 (F.C.T.D.), which suggested that there was a residual judicial discretion to extend time in exceptional circumstances. However, Richard J. found that subs. 44(1) of the Act should be interpreted in a manner consistent with the plain meaning of its terms. An application to review the s. 28 decision must be filed within 20 days after the notice is given. The Federal Court has no power to extend the time after it has expired.

Comments

1. This decision should be compared with *SNC-Lavalin Inc. v. Canada (Minister of Public Works)* (1994) 79 F.T.R. 113 (F.C.T.D.) which held that the Federal Court has a residual discretion to extend the time to make a s. 44 application after the 20-day period prescribed by s. 44 of the *ATIA* had passed.
2. See also *J.M. Schneider Inc. v. R.* (1986), 12 C.P.R. (3d) 90 (F.C.T.D.) which held that the *ATIA* does not provide for an extension of the time prescribed under s. 44.

**HYDRO-QUÉBEC AND NATIONAL ENERGY BOARD AND
MOUVEMENT AU COURANT V. GRAND COUNCIL OF CREES
(OF QUEBEC) AND CREE REGIONAL AUTHORITY**

File No.: T-2109-96

References: (1997), 133 F.T.R. 34
(F.C.T.D.)

Date of Decision: April 23, 1997

Before: R. Morneau, Prothonotary
(F.C.T.D.)

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

Abstract

- Request by a third party for a copy of a contract between Hydro-Québec (Hydro) and an American company.
- Contract considered confidential by the parties.
- Decision by the National Energy Board (the Board) to disclose the contract, after giving notice to Hydro and considering Hydro's objections.
- Substance and objective of the consultation process provided for by ss. 27, 28 and 44 of the *Access to Information Act (ATIA)* were complied with even though the request for access was informal.
- Decision of the Board to disclose is subject to judicial review under s. 44 of the *ATIA*.

Issues

This case raises the question whether a decision of the Board was made under the *ATIA* and, if so, whether the process followed by the Board in making that decision was such as would allow Hydro to bring an application for review of that decision by the Federal Court under s. 44 of the *ATIA*.

Facts

The Board granted Hydro two energy export permits. One of the conditions of the permits was that a copy of any specified contractual arrangements associated with an export of energy be filed with the Board after being executed, and that it be served on requesting accessible Canadian purchasers.

Hydro and an American company signed an exportation contract.

In January 1996, the respondent Mouvement au Courant (MAC) made a written request to the Board for a copy of the contract.

The Board replied that it was not yet in receipt of the contract, but that it would consider the respondent's request pursuant to the *ATIA* once it received the contract.

In February 1996, Hydro sent the contract to the Board, along with a statement that it contained information of a commercial nature and that the parties were asking the Board to treat it as a confidential document.

In March 1996, the Board advised Hydro of its intention to consider MAC's request for access to the contract pursuant to the *ATIA* unless it received convincing representations by Hydro against its disclosure.

In April 1996, Hydro made its representations, emphasizing the confidential nature of the document.

The Board nevertheless decided in September 1996 to disclose the contract to the respondent.

Hydro applied to the Federal Court by way of notice of motion for a review of the Board's decision pursuant to s. 44 of the *ATIA*.

By order of the Federal Court dated December 5, 1996, the parties were given leave to submit a preliminary question to the Court, which is at issue in the instant proceedings:

so that it may decide whether the National Energy Board has made a decision pursuant to the provisions of the *Access to Information Act* and whether that decision is reviewable by the Court having regard to the provisions of that Act, or whether the matter must be referred back to the National Energy Board for it to make a decision on the request made by the respondent Mouvement au Courant.

Decision

The application was allowed.

Reasons

The Board's decision was not and did not have to be made pursuant to its enabling statute.

The Court acknowledged that MAC's request for access was not a formal request under the *ATIA* (the *ATIA* was not referred to, the usual request for access form was not used and the administrative fees were not paid), that the Board was not in possession of the contract when MAC made its request for access to the information and that the time limits, the notices, and the contents of the notices did not comply with the statutory requirements of sections 9, 27, and 28 of the *ATIA*.

The Prothonotary held that despite the various deficiencies for which the Board was responsible, both the Board and Hydro-Québec had complied with the substance and objective of the consultation process provided for by ss. 27, 28 et 44 of the *ATIA*. Thus, the decision to disclose the contract to MAC was a decision made pursuant to the *ATIA*, and it was open to Hydro to proceed under s. 44 of the *ATIA* to have that decision reviewed.

Comments

This order is inconsistent with the principle that only a formal access to information request under the *ATIA* can result in a decision to disclose all or part of a record under ss. 28(1)(b) or 29(1) of the *ATIA*, and thus, in an application for judicial review under section 44 of the *ATIA*.

**THE ATTORNEY GENERAL OF CANADA AND BONNIE
PETZINGER V. THE INFORMATION COMMISSIONER OF
CANADA AND MICHEL DRAPEAU**

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| File No.: | T-1928-96 |
| References: | Not reported |
| Date of Decision: | September 8, 1997 |
| Before: | MacKay (F.C.T.D.) |
| Section(s) of <i>ATIA</i> / <i>PA</i> : | Ss. 34, 35 and 63(1) <i>Access to Information Act (ATIA)</i> |

Abstract

- Complaint that Access Coordinator is in conflict of interest when dealing with the requester.
- Investigation by Commissioner.
- Report by Commissioner finding no conflict of interest but concluding reasonable apprehension of bias and recommending that the Access Coordinator not be personally involved in examining requesters requests.
- Judicial review requested under s. 18.1 of *Federal Court Act*

Issues

The Court had to address three issues:

- (1) The Attorney General's (the AG) motion for leave to amend and to file supplementary affidavits;
- (2) Commissioner's and Mr. Drapeau's motion to strike out the originating notice of motion;

(3) Commissioner's objection to producing the material accumulated during the investigation.

Facts

After his release from the Department of National Defence (DND), the respondent, M. Drapeau became ultimately dissatisfied with the responses or lack of them by DND to his requests for information. He filed a complaint with the Information Commissioner pursuant to s. 30 of the *ATIA*. "In that complaint, it was alleged that Ms. Petzinger (the Access Coordinator) was in a position of conflict of interest in dealing with his requests for information which led to a lack of objectivity on her part in dealing with his requests and resulted in a poorer level of service for his requests".

In January 1996, an investigation was initiated by the Information Commissioner. In August 1996, the resulting report concluded that although there was no conflict of interest, past actions and positions taken by the Ms. Petzinger raise a reasonable apprehension of bias against M. Drapeau. 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 M. Drapeau.

On 26 August 1996, the AG and Ms. Petzinger file an application for judicial review challenging the Commissioner's right to make a report along the lines contemplated in the draft report. At the same time, the AG and Ms. Petzinger filed a motion for varied interlocutory relief.

On 28 August 1996, the Deputy Minister of DND wrote to the Commissioner to advise him that she did not accept the Commissioner's recommendations relating to Ms. Petzinger. However, the recommendations directed at exemptions were accepted and the documents were released.

The Court heard the motion for interlocutory relief on 30 August 1996 and dismissed it.

On 3 September 1996, the Commissioner reported to Mr. Drapeau on the results of his investigations and on DND's refusal to accept his recommendation relating to Ms. Petzinger's continued involvement.

Thereupon, the AG attempted to amend his originating notice of motion and to file supplementary affidavits. The Court directed the Registry to refuse to accept these documents for filing on the basis that the AG had to seek, and obtain, permission to amend as well as permission to file the supplementary affidavits. The AG promptly did so.

In answer to this motion, both Mr. Drapeau and the Commissioner moved to have the originating notice of motion struck as constituting an abuse of process.

In both the original originating notice of motion and in its amended version, the AG requested production of the record of the investigation. The request was based upon Rule 1612 of the *Federal Court Rules*. The Commissioner objected to the disclosure.

Decision

- (1) The Judge would allow the amended notice of motions and the filing of the supplementary affidavits, but for his decision on the motion to strike.
- (2) The application for judicial review is moot (*i.e.* hypothetical).
- (3) The Commissioner's objection is well founded.

Reasons

1. The motion to amend

The Judge would allow the amended notice of motions and the filing of the supplementary affidavits, but for his decision on the motion to strike.

2. The motion to strike

The Judge decided that, because the Commissioner completely discharged the mandate imposed on him by the Act (*i.e.*, investigation, recommendation, response by government institution and report to complainant), the application for judicial review raises moot issues.

In my opinion, the relief sought will have no practical effect upon the rights of the parties now that the Minister has declined to act on the Commissioner's recommendations. There is no longer a controversy between the applicants and the Commissioner, except with respect to the appropriateness of the Commissioner's recommendation, which is not to be followed in any event. Because the relief sought is now

moot in regard to any practical effects, pursuit of that relief by judicial review is futile in any practical sense. That, in my opinion supports a conclusion that the proceedings should now terminate by striking the originating notice of motion, unless there be some other compelling reason that the matter continue to a hearing.

The Judge finds no such compelling reasons, ruling that the allegation of excess of jurisdiction was not meritorious.

3. Objection to the production of documents

The Judge decided that subs. 63(1) of the Act vest the Commissioner with a discretion to decide what information to disclose to parties against whom complaints are made. The Commissioner must base his decision on his opinion of what is necessary to carry out an investigation or to establish the basis for the findings and recommendations of a report under the Act. He concludes:

In my view, absent a strong case that the disclosure already made does not reasonably meet those objectives, the Court may not intervene to direct the Commissioner that the discretion vested in him has not been properly exercised, and that he must disclose further information.

The Judge then accepted the Commissioner's argument that the information ought not be produced.

In my opinion, the decision in *Rubin* is conclusive of the issue here raised. If that sort of information may not be

compelled to be provided in review proceedings set out by the Act itself, because of the provisions of the Act against disclosure, as *Rubin* teaches, those provisions should be similarly applied to preclude disclosure in judicial review proceedings initiated to review the decision of the Commissioner as a result of an investigation, with a view to setting it aside.

Comments

Without doubt, the question of the relationship between the *Access to Information Act* and other mechanisms of access to information is an important issue. So is the extent of the Commissioner's power to investigate allegations of bias by an Access Coordinator.

In this case, the Court reviewed the connection between the provisions of the Act and the requirement to produce the record, when requested under Rule 1612, in an application for judicial review.

1. This portion of Justice MacKay's reasons is *obiter dicta*. The request for document is ancillary to an existing application for judicial review. If the originating notice of motion is struck out, the application ceases to exist and the request for documents lapses. This is why the Judge's comments are, strictly speaking, *obiter dicta*.
2. The Court leaves open a number of doors. The Court accepts the proposition that the Commissioner's investigation is not immune from judicial review. Rules 1612 and 1613 of the *Federal Court Rules* codify the common

law rule that the record of an inferior body was to be produced before a superior court sitting in review of a decision made by the inferior body. Thus, in a proper case, the Court will order the production of the record of the investigation in aid of an application for judicial review. A proper case would be a case in which a *prima facie* case of denial of natural justice is made out in the application.

RONALD W. TOLMIE V. ATTORNEY GENERAL OF CANADA

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| File No.: | T-754-96 |
| References: | Unreported decision |
| Date of Decision: | October 24, 1997 |
| Before: | McGillis J. (F.C.T.D.) |
| Section(s) of <i>ATIA / PA</i> : | Ss. 18(b) and 68(a) <i>Access to Information Act (ATIA)</i> |

Abstract

- Request for computer-readable version of the Revised Statutes of Canada
- Refused
- Ss. 18(b) and 68(a) *ATIA* applied
- Complaint
- Commissioner agrees with Respondent
- S. 41 judicial review
- Application for review dismissed

Issues

Whether the applicant is entitled to have access to a computer-readable version of the Revised Statutes of Canada.

Facts

The applicant requested access to a computer-readable version of the Revised Statutes of Canada.

The Department was planning to make the Revised Statutes of Canada available to members of the public. Negotiations were underway to provide this information in CD-ROM format.

During the course of the Information Commissioner's investigation, the respondent took the position that the records were excluded from access under para. 68(a) of the *Access to Information Act* on the basis that they were published material already publicly available in print. On August 20, 1995, the respondent established the Department of Justice Internet Web Site to provide the public with access to various types of information, including all federal laws. The respondent also announced that CD-ROMs containing the consolidated versions of the Revised Statutes of Canada and the Regulations would be released in the near future, and would be updated twice a year.

The Information Commissioner concluded that, at the time of the applicant's request, the non-disclosure of the records was justified under para. 18(b) of the *Access to Information Act* on the basis of the economic interests of the government. He further concluded that, at present, para. 68(a) of the *Access to Information Act* would apply to exempt the records from disclosure given the availability of the electronic version of the statutes on CD-ROM and on the Internet.

Decision

The application for review is dismissed. There is no order as to costs.

Reasons

The requested records are presently exempt from disclosure under para. 68(a) of the *Access to Information Act* on the basis that an electronic version of the Revised Statutes of Canada is available to the public in a CD-ROM format or on the Internet. Since the information is publicly available in electronic format, the provisions of the *Access to Information Act* have no application in this matter. The applicant is therefore not entitled to have access to the requested records, even though he may wish to obtain them in the particular electronic format in which they are held by the respondent. **Under the Access to Information Act, a person may seek access to information, but he has no right to dictate that the information be provided to him in a particular format.**

The applicant stated that he had not been provided with an opportunity to make representations to the Information Commissioner on the question of whether the respondent could rely on para. 68(a) of the *Access to Information Act* in this matter. He adduced no evidence to indicate that the Information Commissioner had denied him the right to make submissions on that point.

A review of the Information Commissioner's decision indicates that he expressly considered the question of whether the respondent could rely on an additional ground of exemption raised during the course of the investigation. Furthermore, he appears to have considered representations made by the applicant on that very point.

**LINDSEY HUTTON V. THE MINISTER OF NATURAL
RESOURCES TERRA INTERNATIONAL INC. ET AL.**

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| File No.: | T-2185-96 |
| References: | (1997), 137 F.T.R. 110 (F.C.T.D.) |
| Date of Decision: | October 31, 1997 |
| Before: | Gibson J. (F.C.T.D.) |
| Section(s) of <i>ATIA</i> / <i>PA</i> : | Ss. 18(b), 20(1)(b), (c) and (d) <i>Access to Information Act (ATIA)</i> |

Abstract

- Request for documents produced by C.E.R.L.
- Refusal
- Exemptions in paras. 18(b), 20(1)(b)(c)(d) applied
- Complaint
- Information Commissioner supported Minister's refusal
- S. 41 judicial review application
- Discretion properly exercised?
- Application dismissed

Issues

Whether the Minister, through her or his delegate, erred in the determinations and, where relevant, the exercise of discretion, in rejecting the applicant's request for access to the requested record on the basis of paras. 18(b) and 20(1)(b), (c) and (d) of the Act?

Facts

An application pursuant to s. 41 of the *Access to Information Act* to review the decision of the Minister of Natural Resources denying the Applicant's request under that Act for access to certain records in the Minister's control relating to studies conducted by the Canadian Explosive Research Branch (C.E.R.L.).

The Information Commissioner advised the applicant that he had decided to support the Minister's refusal and declined to support the applicant's complaint.

Decision

Application is dismissed.

Reasons

Paragraph 18(b) is a discretionary exemption provision. The statute clearly envisages a test of reasonable expectation of prejudice; it does not require actual proof of prejudice.

Gibson J. could find no basis to conclude that the Minister erred in determining that disclosure of the requested records **could reasonably be expected to prejudice** to competitive position of C.E.R.L. It was not incumbent on the Minister to determine that disclosure of the requested record **would** prejudice the competitive position of C.E.R.L.

Regarding the second issue, the review of the discretionary decision of the Minister, Gibson, J. was satisfied that the evidence provided on behalf of the Minister is sufficient to demonstrate that the disclosure of the information could

reasonably be expected to prejudice the competitive position of C.E.R.L. He was also satisfied that, in the current climate of fiscal restraint, protection of the competitive position of C.E.R.L. is an important public policy concern. In the result then, he concluded that the discretion vested in the Minister was properly exercised.

To fall within para. 20(1)(b), four requirements must be met: the information must be financial, commercial, scientific or technical information; confidential information; supplied to a government institution by a third party; and consistently treated in a confidential manner by the third party.

On the basis of the evidence before him, Gibson J. could not conclude that the requested record contains financial, commercial, scientific or technical information **supplied to C.E.R.L. by Terra** or one or more of its associates that has been treated consistently in a confidential manner by the supplier. In short, his review indicates that the requested record is not within the ambit of para. 20(1)(b).

Gibson J. was satisfied, however, that the requested record does fall within the terms of paras. 21(1)(c) and (d). In both of those paragraphs, the test is whether the requested records “could reasonably be expected” to result in material financial loss or gain, prejudice to the competitive position of, or to interfere with contractual or other negotiations of a third party, in this case Terra. The evidence is sufficient to demonstrate the magnitude of the amounts at stake in the litigation that is before the Courts in the United States that could reasonably be expected to be the subject to settlement negotiations.

The applicant argued that the Minister erred in a manner justifying relief to the applicant by failing to demonstrate, on the face of the letter denying access, that she or he engaged in an analysis of whether subs. 20(6) of the Act should apply in favour of the applicant and whether the requested document is severable and therefore should have been at least partially disclosed pursuant to s. 25 of the Act.

The Court had before it the uncontradicted evidence of the Minister's delegate to the effect that he considered both of the provisions. In the absence of evidence to the contrary, Gibson J. ruled that the delegate's evidence should be accepted.

The judge found no reason to conclude that the decision not to rely on the discretionary authority to disclose under subs. 20(6) and not to sever under s. 25 was other than reasonable.

**RUBY V. ROYAL CANADIAN MOUNTED POLICE
AND DEPARTMENT OF EXTERNAL AFFAIRS**

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| File Nos.: | T-867-90, T-638-91 |
| References: | [1997] F.C.J. No. 1750 (T.D.) (QL) |
| Date of Decision: | November 25, 1997 |
| Before: | MacKay J. (F.C.T.D.) |
| Section(s) of <i>ATIA</i> / <i>PA</i> : | Ss.16, 18, 19, 22(1)(a), (b), 41, 46, 48, 49 and 51 of the <i>Privacy Act</i> (<i>PA</i>) |

Abstract

- S. 41 *PA* review
- *Ex parte* filing of evidence
- Refusal to confirm or deny the existence of personal information
- Constitutionality of s. 51
- Ss. 1 and 2(b) of the *Canadian Charter of Rights and Freedoms*
- Class exemptions review test
- Discretionary exemptions review test
- Reasonable expectation of probable harm
- Purpose of the *PA*
- Fettering of discretion or improper exercise of discretion
- Intergovernmental relations
- Costs

- Role of Court under ss. 48 and 49 *PA*
- Affidavits
- Exempt banks

Issues

- (1) Is s. 51 of the *Privacy Act* constitutional?
- (2) Should the judge exercise his discretion in accepting evidence filed on an *ex parte* basis under s. 46, which limited the ability of the applicant to make submissions?
- (3) Upon review of discretionary decisions to refuse disclosure of information, must the head of a government institution demonstrate that discretion was properly exercised in each refusal?
- (4) What is the Court's role in review under ss. 48 and 49?
- (5) Was the RCMP authorized to disclose the personal information requested on the basis of subpara. 22(1)(a)(ii) and s. 27?
- (6) Did the Department of External Affairs and CSIS properly exercise discretion under subs. 16(2) in refusing to indicate whether personal information existed?
- (7) Were specified alternate grounds appropriate for refusals of the Department of External Affairs and CSIS in relation to requests for access?

- (8) Does the proper exercise of discretion in s. 19 require the head of a government institution to first seek the consent of the other government before refusal to release the information?
- (9) Can documents 20-25 years old meet the “reasonable expectation of injury” test as required by para. 22(1)(b)?

Facts

This was the disposition of two applications heard together under s. 41 of the *Privacy Act* concerning the refusal of access to three personal information banks.

The first bank was held by the RCMP and the information was withheld under subpara. 22(1)(b)(ii) and s. 27 of the Act.

The second bank was held by the Department of External Affairs who, pursuant to subs. 16(2), would neither confirm nor deny the existence of the information, however if the information did exist it would be exempt under paras. 22(1)(a) and 22(1)(b).

The third bank was held by CSIS who, pursuant to subs. 16(2), would neither confirm nor deny the existence of the information, however if the information did exist it would be exempt under ss. 19 and 21.

The s. 41 review hearings concerning the refusals based on s. 19 and/or 21 were heard as required under s. 51 of the Act, *in camera* and with *ex parte* submissions made by the head of the government institution. At his discretion (under s. 46),

MacKay J. also allowed the filing of evidence on an *ex parte* basis in regards to claims based on exemptions other than s. 19 or 21.

Decision

The applications were dismissed with costs.

Reasons

Issue 1:

Section 51 is constitutional. In preliminary proceedings heard by Simpson J. (*Ruby v. Canada (Solicitor General)*, [1996] 3 F.C. 134 (T.D.)) it was determined that the legislation violated para. 2(b) of the *Charter*, but was saved by s. 1 of the *Charter*.

Issue 2:

The judge exercised his discretion under s. 46 to accept evidence *ex parte*. While under s. 46 there is a discretion as to whether to receive representations *ex parte*, that section also requires that when the head of the institution does not indicate whether the information exists, the Court is to take every reasonable precaution to avoid the disclosure of any information that the head of the government institution is authorized to refuse to disclose or any information as to whether personal information exists.

To satisfy the above requirement of s. 46, reception of the evidence on an *ex parte* basis is an essential process for the Court to examine and satisfy itself of the basis for any refusal to disclose any information. This is now an accepted process for *Privacy Act* and *Access to Information Act* proceedings.

Issue 3:

Unless a ground for questioning the exercise of discretion is raised by the applicant, the Court relies upon the head of the institution or his delegate in meeting the public duty to exercise discretion properly. Absent an exercise of discretion that appears on its face perverse, or a ground raised by the applicant, the Court assumes the exercise of discretion is proper.

Issue 4:

For s. 49 refusals based on s. 21 and para. 22(1)(b), the Court may intervene only where “it determines that the head of the institution did not have reasonable grounds on which to refuse to disclose the personal information” requested. Section 48 refusals allow the Court to intervene where it finds that “the head of the government institution is not authorized to refuse to disclose the personal information.” The standard established under s. 49 for intervention by the Court is more stringent.

Issue 5:

The only question raised by the applicant was whether any discretion was exercised at all by the RCMP. Discretion was exercised and the refusal to disclose information was authorized under the Act.

Issue 6:

The Department of External Affairs properly exercised its discretion in applying subs. 16(2). The applicant had argued that the administrators failed to exercise the discretion vested in them under the Act because they followed, in each case, a policy to refuse to indicate the existence of information in specific personal information banks. It was argued that by providing for s. 18 designated exempt banks, the standard practice of declining to indicate the existence of personal information in banks other than s. 18 banks was precluded.

MacKay J. held that the Act does not preclude the head of the institution from deciding that information in certain banks other than those exempt under s. 18 should also not be acknowledged to exist. It was not a fettering of discretion under subs. 16(2).

Issue 7:

Since the refusal to indicate the existence of personal information banks was authorized, the alternate grounds have little significance for the result of this review.

Issue 8:

The head of a government institution does not first have to seek consent of the other government before applying the s. 19 exemption. That would reverse the primary thrust of s. 19, that information in that classification not be disclosed.

Issue 9:

On these facts it was uncontradicted evidence that probable harm would occur with the release of the documents. The Court cannot substitute its view for that of CSIS or the Solicitor General about the assessment of the reasonable expectation of probable injury. The affiant's uncertainty in specifying a specific injury did not affect the Judge's decision that the test of reasonable probability was met under para. 22(1)(b). It was sufficient that the affiant outlined the types of potential injury to sources, targets and operations if information currently withheld were disclosed.

Comments

1. This case is being appealed.
2. With respect to para. 22(1)b) PA, see *Rubin v. Canada (Minister of Transport)*, (1997), 221 N.R. 145 (F.C.A.), as well as *Information Commissioner and Privacy Commissioner v. Chairperson of the Immigration and Refugee Board*, [1997] F.C.J. No. 1812 (T.D.) (QL), T-2052-97, decision dated December 24, 1997.

RUBIN V. MINISTER OF TRANSPORT

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| File No.: | A-70-96 |
| References: | (1997), 221 N.R. 145 (F.C.A.) |
| Date of decision: | November 26, 1997 |
| Before: | Stone, Linden and McDonald J.J.A. (F.C.A.) |
| Section(s) of <i>ATIA</i> / <i>PA</i> : | Ss. 2(1), 14(b), 15(1)(g), 16(1)(a), (c), (i), (ii), (iii), 16(4), 20(1)(b), (c), 22, 24 and 25 of the <i>Access to Information Act (ATIA)</i> |

Abstract

- Post-accident review of aircraft crash
- Role of subs. 2(1) *ATIA* purpose clause
- Statutory interpretation and bilingual statutes
- Meaning of “conduct of lawful investigations” in para. 16(1)(c)
- General investigative process
- Specific investigation
- Chilling effect
- Public interest in disclosure

Issues

- (1) What is the role of subs. 2(1) in the interpretation of para. 16(1)(c) of the *ATIA*?

- (2) What is the scope of para. 16(1)(c) of the *ATIA*?
- (3) Is the Post-Accident Review an investigation as defined under subs. 16(4) of the Act?
- (4) Were the evidentiary and threshold requirements necessary to prove reasonable harm met in this case?

Facts

In August 1991 a Nationair DC-8 aircraft crashed in Saudi Arabia killing 263 passengers. Transport Canada implemented a post-accident review of the incident. The review delved into organizational, operational, maintenance and management components not suitable for Transport Canada's mandatory regulatory investigations. This type of investigation was voluntary on the part of the airline and required the co-operation of employees to be successful in its aim, which was to promote safety. The uncontradicted evidence was that oral assurances of confidentiality were necessary and given to ensure co-operation from interviewees.

Mr. Rubin filed an *ATIA* request for a copy of that report. Transport Canada refused its disclosure, ultimately relying on para. 16(1)(c) of the *ATIA*. Transport Canada argued that if individuals could not remain anonymous they would refuse to co-operate with investigators in these voluntary types of investigations and that therefore the information should not be disclosed as it would be injurious to future lawful investigations.

The Trial Division (*Rubin v. Canada (Minister of Transport)* (1995), 105 F.T.R. 81 (F.C.T.D.)) held in relation to para. 16(1)(c) that the conduct of lawful investigations is not restricted to a specific investigation but includes a situation in which the disclosure of information may reasonably be expected to be injurious to the conduct of lawful investigations in the future. Dubé J. noted that the injury may be to a general investigative process and not only to a particular investigation.

Decision

The appeal was allowed on the grounds that the Trial Judge erred in law in finding that para. 16(1)(c) contemplates a process rather than a particular investigation and can affect past, present, as well as future investigations. The report was ordered disclosed.

Reasons

Issue 1:

The Court found that all exemptions must be interpreted in light of the subs. 2(1) *ATIA* purpose clause. In addition, where there are two interpretations open to the Court, it must, given Parliament's stated intention, choose the one that infringes the least on the public's right to access.

Issue 2:

The Court of Appeal disagreed with the Trial Judge and found that the Trial Judge failed to consider the stated purpose of the Act as set out in subs. 2(1) when defining the ambit of

para. 16(1)(c). In deciding that a narrower scope of para. 16(1)(c) was the intention of Parliament, the Court noted that:

- a) the Trial Judge’s judgment would protect from public view most non- regulatory investigations which is contrary to the purpose and therefore could not have been Parliament’s intent;
- b) the Trial Judge’s interpretation would make other provisions of the Act redundant such as para. 16(1)(a) and s. 20;
- c) the Trial Judge’s interpretation is at odds with the principles of statutory construction, specifically the modern interpretation rule – that where there is more than one plausible interpretation of a section the one that best accords with the purpose of the Act (which in this case is that exemptions are to be limited and specific) should be chosen;
- d) the French version of the phrase “conduct of lawful investigations” uses the word “*déroulement*” instead of “*conduite*”, which is used in different sections of the Act to translate conduct. “*Déroulement*” has a temporal nuance or quality that “*conduite*” does not have – it does not look to the future.

The Court found that para. 16(1)(c) should be interpreted to refer to something specific about the development or progress of a particular investigation. The injury cannot be to the general investigative process, but must be to a particular investigation being undertaken or about to be undertaken.

The Court added that as for future investigations, it is possible that information may affect an investigation that has not yet been undertaken but is about to be undertaken. An example is if a criminal investigation was also going to be undertaken as a result of an accident but had not yet begun. To apply to the future, the exemption must be limited, specific and known.

Issue 3:

The Court of Appeal agreed with the Trial Judge and the respondent that the Post-Accident Review was an investigation as defined by subs.16(4) of the Act.

Issue 4:

Due to their reasons on the interpretation of para. 16(1)(c), the Court of Appeal found it unnecessary to deal with the question of whether the evidentiary and threshold requirements necessary to prove reasonable expectation of probable harm under para. 16(1)(c) were met in this case.

Comments

1. This decision is important because it re-emphasizes the crucial role played by subs. 2(1) in the interpretation of exemptions under the *ATIA*.
2. This decision also applies to para. 22(1)(b) of the Privacy Act. See also Information Commissioner and Privacy Commissioner v. Chairperson of the Immigration and

Refugee Board, [1997] F.C.J. No. 1812 (T.D.) (QL), T-2052-97, T-908-97, T-911-97, decision dated December 24, 1997, and Ruby v. Royal Canadian Mounted Police and Department of External Affairs, [1997] F.C.J. No. 1750 (T.D.) (QL), T-867-90, T-638-91, decision dated November 25, 1997.

**INFORMATION COMMISSIONER AND PRIVACY COMMISSIONER
V. CHAIRPERSON OF THE IMMIGRATION AND REFUGEE BOARD**

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|---|--|
| File No.: | T-2052-97 |
| References: | [1997] F.C.J. No. 1812 (T.D.) (QL) |
| Date of decision: | December 24, 1997 |
| Before: | Richard J. (F.C.T.D.) |
| Section(s) of <i>ATIA</i> / <i>PA</i> : | Ss. 2(1), 4(1), 16(1)(c), (i), (ii), (iii), 16(2)(c), 17, 19, 42(1)(a), 48 and 55(1) of the <i>Access to Information Act (ATIA)</i> and 2, 22(1)(b), (i), (ii), (iii), 47, 49 and 52(1) of the <i>Privacy Act (PA)</i> |

Abstract

- Personal information
- Administrative investigation
- Consultant's notes
- Promise of confidentiality
- Interpretation of paras. 16(1)(c) *ATIA* and 22(1)(b) *PA*
- Meaning of "conduct of lawful investigations"
- Reasonable expectation of probable harm
- Chilling effect
- General investigative process or specific investigation

Issues

- (1) Could the Board rely on para. 16(1)(c) of the *Access to Information Act* to justify the refusal to disclose documents compiled during an internal administrative investigation?
- (2) Does a person have the right to know what other persons have said about him or her during an internal administrative investigation?

Facts

Further to articles published in a Vancouver newspaper concerning incidents that were said to have occurred during *in camera* hearings of the Immigration and Refugee Board (IRB), senior officials of the IRB felt that the articles were unfair, but were especially concerned about the leaking of information during *in camera* hearings. To help them decide whether it was appropriate to call in the RCMP or take other measures, senior officials of the IRB mandated an outside lawyer to conduct an investigation. The consultant was invited to question employees who had participated directly or indirectly in the *in camera* hearings to determine whether there had been inappropriate conduct and, if so, who was responsible. The consultant submitted her report to the IRB on January 31, 1996 and the RCMP did not have to intervene.

An employee who had been questioned asked to see the report and the notes taken by the consultant during her interviews with the employees. The IRB refused, arguing that disclosure could reasonably be expected to be injurious to the conduct of future lawful investigations. Citing para. 16(1)(c) of the *Access to Information Act*, the IRB argued that the

mandate of establishing the facts, in this case, constituted an “investigation” and that the persons questioned had been promised that the information that they would provide would remain confidential. If this promise were not kept, argued the IRB, employees would no longer agree to cooperate in other internal administrative investigations in the future. The IRB further argued that the employees’ unwillingness to cooperate would impair the Board’s ability to discharge its obligations as an employer and the responsibilities delegated to it under the *Financial Administration Act* and the *Immigration Act*.

The requesting employee felt that any idea or opinion expressed by other persons concerning him, and appearing in the consultant’s notes or final report, should be disclosed to him. The employee was of the opinion that, if any accusation whatsoever had been made against him, he had the right to know the content of that accusation and who made it.

The Chairperson of the IRB agreed to disclose the final report in its entirety, but decided not to comply with the Information Commissioner’s recommendation regarding the consultant’s notes. With the requester’s consent, the Information Commissioner instituted proceedings in the Federal Court for an order requiring the disclosure of the information in question.

The Information Commissioner argued that, even though the mandate of establishing the facts constituted an “investigation” for the purposes of para. 16(1)(c) of the *Access to Information Act*, the documents relating to this investigation could not remain secret after the investigation had been completed.

The Privacy Commissioner, for his part, was of the opinion that there was no reasonable expectation of injury to the institution and that there was no justification for refusing to disclose personal information to the individuals concerned.

The IRB, for its part, argued that the documents should remain secret in order to guarantee the full cooperation of potential witnesses in other such investigations in the future.

Decision

The application brought under the *Privacy Act* was allowed and the IRB was ordered to disclose the personal information at issue. With respect to the applications brought under the *Access to Information Act*, the Court referred the matter of the interview notes back to the IRB to determine, in accordance with s. 19 of the *ATIA* (third party personal information) which personal information contained in the notes should not be released. (The s. 19 exemption is a mandatory one, not a discretionary one.)

Reasons

The Court concluded that the Immigration and Refugee Board had not adduced sufficient evidence that disclosure could reasonably be expected to be injurious to the activities to be carried on in the conduct of lawful investigations, in particular because once the investigation had been completed, expectation of probable harm was merely speculative.

The Court stated that:

Where the harm foreseen by release of the records sought is one about which there can only be mere

speculation or mere possibility of harm, the standard is not met. It must have an impact on a particular investigation, where it has been undertaken or is about to be undertaken. One cannot refuse to disclose information under paragraph 16(1)(c) of the *Access to Information Act* or paragraph 22(1)(b) of the *Privacy Act* on the basis that to disclose would have a chilling effect on possible future investigations.

Paragraphs 16(1)(c) ATIA and 22(1)(b) PA can be relied on only where there is specific and significant evidence of injury to a specific lawful investigation that has been undertaken or that is about to be undertaken.

Richard J. followed the decision of the Federal Court of Appeal in *Rubin v. Canada (Minister of Transport)* (1997), 221 N.R. 145 (F.C.A.) and held that para. 16(1)(c) ATIA (and hence para. 22 (1)(b) PA) does not apply to completed investigations.

The Court stated the following:

In this instance, the head of the government institution has not clearly and directly demonstrated its case to refuse disclosure. The perceived injury or prejudice is speculative. There is no evidence of probable harm to any investigation that has been undertaken or is about to be undertaken.

Given his decision on the interpretation of paras. 16(1)(c) ATIA and 22(1)(b) PA, Richard J. found it unnecessary to deal with the issue of the evidentiary requirements necessary to prove reasonable expectation of probable harm that disclosure would cause.

Comments

1. A government employee or a consultant should not guarantee persons who cooperate in internal administrative investigations that information that they provide will remain confidential. It is unlikely that such promises can be kept in light of the other legislative provisions that give individuals the right to know what others have said about them and in light of the decision of the Federal Court of Appeal in *Rubin v. Canada (Minister of Transport)* (1997), 221 N.R. 145 (F.C.A.) rejecting the *chilling effect* argument. Confidentiality can only be guaranteed within the limits of the legislation.

Witnesses, for example, can be informed at the outset that the confidentiality of the information collected cannot be guaranteed, but that disclosure of information or documents, as required, will be in accordance with the applicable legislative provisions.

2. See also *Ruby c. Royal Canadian Mounted Police and Department of External Affairs*, [1997] F.C.J. No. 1750 (T.D.) (QL), T-867-90, T-638-91, decision dated November 25, 1997.

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Fax: (403) 292-5503

National Farm Products Council

Lise Leduc
Martel Building
270 Albert Street, 13th Floor
P.O. Box 3430, Station D
Ottawa, Ontario K1P 6L4

Tel: (613) 995-1411
Fax: (613) 995-2097

National Film Board of Canada

Geneviève Cousineau
P.O. Box 6100, Station A
Montréal, Quebec H3C 3H5

Tel: (514) 283-9028
Fax: (514) 496-1646

National Gallery of Canada

Yves Dagenais
380 Sussex Drive
Ottawa, Ontario K1N 9N4

Tel: (613) 991-0040
Fax: (613) 990-9810

National Library of Canada

Paul McCormick
395 Wellington Street, Room 199
Ottawa, Ontario K1A 0N4

Tel: (613) 996-2892
Fax: (613) 996-3573

**National Museum of Science
and Technology**

Graham Parsons
2421 Lancaster Road
P.O. Box 9724, Station T
Ottawa, Ontario K1G 5A3

Tel: (613) 991-3033
Fax: (613) 990-3635

National Parole Board

John Vandoremalen
340 Laurier Avenue West, 9th Floor
Ottawa, Ontario K1A 0R1

Tel: (613) 954-6547
Fax: (613) 957-3241

National Research Council Canada

Huguette Brunet
Montreal Road Campus
Building M-58, Room W-314
Ottawa, Ontario K1A 0R6

Tel: (613) 990-6111
Fax: (613) 991-0398

**National Round Table on the
Environment and the Economy**

Gene Nyberg
Canada Building
344 Slater Street, Suite 200
Ottawa, Ontario K1R 7Y3

Tel: (613) 995-7581
Fax: (613) 992-7385

Natural Resources Canada

Francine Roberts
580 Booth Street, 11th Floor
Ottawa, Ontario K1A 0E4

Tel: (613) 995-1236
Fax: (613) 995-0693

**Natural Sciences and Engineering
Research Council of Canada**

Victor Wallwork
350 Albert Street, 13th Floor
Ottawa, Ontario K1A 1H5

Tel: (613) 995-6214
Fax: (613) 992-5337

Northern Pipeline Agency Canada

C.F. Gilhooly
Lester B. Pearson Building
125 Sussex Drive
Ottawa, Ontario K1A 0G2

Tel: (613) 993-7466
Fax: (613) 998-8787

Northwest Territories Water Board

Vicki Losier
Precambrian Building, 9th Floor
P.O. Box 1500
Yellowknife, Northwest Territories
X1A 2R3

Tel: (867) 669-2772
Fax: (867) 669-2719

**Office of the Auditor General
of Canada**

Susan Kearney
240 Sparks Street, 11th Floor
Ottawa, Ontario K1A 0G6

Tel: (613) 995-3708
Fax: (613) 947-9556

Office of the Chief Electoral Officer

Jacques Girard
257 Slater Street, Room 9-104
Ottawa, Ontario K1A 0M6

Tel: (613) 990-5596
Fax: (613) 993-5880

**Office of the Commissioner
of Official Languages**

Louise Dubé
344 Slater Street, 3rd Floor
Ottawa, Ontario K1A 0T8

Tel: (613) 996-6036
Fax: (613) 993-5082

Office of the Comptroller General
see Treasury Board of Canada

**Office of the Inspector General of
the Canadian Security Intelligence
Service**

Martin Somberg
Sir Wilfrid Laurier Building
340 Laurier Avenue West, 8th Floor
Ottawa, Ontario K1A 0P8

Tel: (613) 993-7204
Fax: (613) 990-8303

**Office of the Superintendent of
Financial Institutions Canada**

Allan Shusterman
255 Albert Street, 15th Floor
Ottawa, Ontario K1A 0H2

Tel: (613) 990-8031
Fax: (613) 952-5031

Pacific Pilotage Authority Canada

Bruce Chadwick
1199 West Hastings Street, Suite 300
Vancouver, British Columbia V6E 4G9

Tel: (604) 666-6771
Fax: (604) 666-1647

**Patented Medicines Prices
Review Board**

Sylvie Dupont-Kirby
Standard Life Centre
333 Laurier Avenue West, Suite 1400
P.O. Box L40
Ottawa, Ontario K1P 1C1

Tel: (613) 954-8299
Fax: (613) 952-7626

Pension Appeals Board

Mina McNamee
Trebla Bldg
473 Albert Street, 10th Floor
Ottawa, Ontario K1R 5B4

Tel: (613) 995-0612
Fax: (613) 995-6834

Petroleum Monitoring Agency Canada
see Natural Resources Canada**Prairie Farm Rehabilitation
Administration**

see Agriculture and Agri-Food Canada

Privy Council Office

Ciuneas Boyle
Blackburn Building
85 Sparks Street, Room 633
Ottawa, Ontario K1A 0A3

Tel: (613) 957-5210
Fax: (613) 991-4706

**Procurement Review Board
of Canada**

see Canadian International
Trade Tribunal

**Public Service Commission
of Canada**

Amelita A. Armit
L'Esplanade Laurier, West Tower
300 Laurier Avenue West, Room 1954
Ottawa, Ontario K1A 0M7

Tel: (613) 992-2425
Fax: (613) 992-7519

Public Service Staff Relations Board

Monique Montgomery
C.D. Howe Bldg, West Tower
240 Sparks Street, 6th Floor
P.O. Box 1525, Station B
Ottawa, Ontario K1P 5V2

Tel: (613) 990-1757
Fax: (613) 990-1849

**Public Works and Government
Services Canada**

Garth Cookshaw
Place du Portage, Phase III
11 Laurier Street, Room 15A2
Hull, Quebec K1A 0S5

Tel: (819) 956-0455
Fax: (819) 994-2119

**Regional Development
Incentives Board**

see Industry Canada

Revenue Canada

Gilles Gaignery
Albion Tower
25 Nicholas Street, 14th Floor
Ottawa, Ontario K1A 0L5

Tel: (613) 957-8819
Fax: (613) 941-9395

Royal Canadian Mint

Marguerite Nadeau
320 Sussex Drive
Ottawa, Ontario K1A 0G8

Tel: (613) 993-1732
Fax: (613) 952-8342

Royal Canadian Mounted Police

André Thouin
1200 Vanier Parkway
Ottawa, Ontario K1A 0R2

Tel: (613) 993-5162
Fax: (613) 993-5080

**Royal Canadian Mounted Police
External Review Committee**

Bernard Cloutier
60 Queen Street, Room 513
P.O. Box 1159, Station B
Ottawa, Ontario K1P 5Y7

Tel: (613) 990-1860
Fax: (613) 990-8969

**Royal Canadian Mounted Police
Public Complaints Commission**

Joanna Leslie
P.O. Box 3423, Station D
Ottawa, Ontario K1P 6L4

Tel: (613) 952-1302
Fax: (613) 952-8045

Seaway International Bridge

Corporation Ltd
Hendrix Saaltink
P.O. Box 836
Cornwall, Ontario K6H 5T7

Tel: (613) 932-6601
Fax: (613) 932-9086

**Security Intelligence Review
Committee**

Madeleine DeCarufel
Jackson Building
122 Bank Street, 4th Floor
Ottawa, Ontario K1P 5N6

Tel: (613) 990-8441
Fax: (613) 990-5230

**Social Sciences and Humanities
Research Council of Canada**

Hélène Price
Constitution Square, Tower 2
350 Albert Street, 11th Floor
Ottawa, Ontario K1P 6G4

Tel: (613) 992-0562
Fax: (613) 992-1787

Solicitor General Canada

Duncan Roberts
Sir Wilfrid Laurier Bldg.
340 Laurier Avenue West
Ottawa, Ontario K1A 0P8

Tel: (613) 991-2931
Fax: (613) 990-9077

Standards Council of Canada

Susan MacPherson
45 O'Connor Street, Suite 1200
Ottawa, Ontario K1P 6N7

Tel: (613) 238-3222
Fax: (613) 995-4564

Statistics Canada

Louise Desramaux
R.H. Coats Bldg., 25th floor
Tunney's Pasture
Ottawa, Ontario K1A 0T6

Tel: (613) 951-9349
Fax: (613) 951-3825

Status of Women Canada

Céline Champagne
360 Albert Street, Suite 700
Ottawa, Ontario K1A 1C3

Tel: (613) 995-4008
Fax: (613) 957-3359

Transportation Safety**Board of Canada**

Marie Gervais
Place du Centre
200 Promenade du Portage, 4th Floor
Hull, Québec K1A 1K8

Tel: (819) 994-8041
Fax: (819) 997-2239

Transport Canada

Linda Savoie
Place de Ville, Tower C
330 Sparks Street, 26th floor
Ottawa, Ontario K1A 0N5

Tel: (613) 993-6162
Fax: (613) 991-6594

Treasury Board of Canada Secretariat

Donald J. Rennie
L'Esplanade Laurier, East Tower
140 O'Connor Street, 9th Floor
Ottawa, Ontario K1A 0R5

Tel: (613) 952-7200
Fax: (613) 998-9071

Veterans Affairs Canada

Barry Johnston
Dominion Building
97 Queen Street, Room 201
P.O. Box 7700
Charlottetown, Prince Edward Island
C1A 8M9

Tel: (902) 566-8609
Fax: (902) 368-0496

Veterans Review Appeal

Board Canada
see Veterans Affairs Canada

**Western Economic
Diversification Canada**

Ron Sewell
200 Kent Street, 8th Floor
P.O. Box 2128, Station D
Ottawa, Ontario K1P 5W3

Tel: (613) 952-9554
Fax: (613) 952-7188

Yukon Territory Water Board

Judi Doering
419 Range Road, Suite 106
Whitehorse, Yukon Y1A 3V1

Tel: (867) 667-3980
Fax: (867) 668-3628

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.

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

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)

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

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)

DEPOSITORY SERVICES PROGRAM

The Depository Services Program (DSP) is a network that distributes federal government publications to more than 800 libraries in Canada, plus another 146 institutions around the world that hold collections of Canadian government publications. The service, sponsored by the Treasury Board and administered by Public Works and Government Services Canada, ensures that federal departments and agencies get their publications in the hands of their clients – the Canadian public, universities and other governments – cost-effectively and efficiently.

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.

In addition, the DSP provides publications to members of Parliament and senators, the research bureaux of political parties, central libraries of the federal government, and media libraries. The government also uses the DSP to fulfil its international obligations under official library exchanges to such institutions as the Library of Congress and to university libraries in other countries that have Canadian studies programs.

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:

Depository Services Program

PWGSC

350 Albert Street, 4th Floor

Ottawa, Ontario

K1A 0S5

Phone: (613) 993-1325

Fax: (613) 941-2410

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

Below is a list of “full depository libraries.”

Alberta

Calgary

University of Calgary Library

Government Documents

2500 University Drive North West

Calgary, Alberta T2N 1N4

<http://www.ucalgary.ca/UofC/departments/INFO/library/>

Edmonton

Edmonton Public Library

Information Division

7 Sir Winston Churchill Square

Edmonton, Alberta T5J 2V4

Legislature Library

Government Documents

216 Legislature Building

Edmonton, Alberta T5K 2B6

University of Alberta

Humanities and Social Sciences Library

1-101 Rutherford South

Edmonton, Alberta T6G 2J8

<http://libits.library.ualberta.ca/library.html>

British Columbia

Burnaby

Simon Fraser University

W.A.C. Bennett Library

Serials Division

Burnaby, British Columbia V5A 1S6

<http://www.lib.sfu.ca>

Vancouver
University of British Columbia
The Walter C. Koerner Library
Government Publications
1958 Main Mall
Vancouver, British Columbia V6T 1Z2

Vancouver Public Library
Serials Section (Acq.)
350 West Georgia Street
Vancouver, British Columbia V6B 6B1
<http://www.vpl.vancouver.bc.ca/>

Victoria
Legislative Library
Government Publications Division
Parliament Buildings
Victoria, British Columbia V8V 1X4

University of Victoria
Government Publications
McPherson Library
P.O. Box 1800
Victoria, British Columbia V8W 3H5
<http://uviclib.uvic.ca>

Manitoba
Winnipeg
Legislative Library
200 Vaughan Street
Main Floor
Winnipeg, Manitoba R3C 0V8

University of Manitoba
Elizabeth Dafoe Library
Government Documents
Winnipeg, Manitoba R3T 2N2
http://www.umanitoba.ca/academic_support/libraries/

New Brunswick

Fredericton
Bibliothèque législative
Publications officielles
766, rue King
C.P. 6000
Fredericton, New Brunswick E3B 5H1

University of New Brunswick
Harriet Irving Library
Government Documents
Fredericton, New Brunswick E3B 5H5
<http://www.lib.unb.ca/>

Moncton
Université de Moncton
Bibliothèque Champlain
Publications officielles
Moncton, New Brunswick E1A 3E9
<http://www.umoncton.ca/champ/page1.htm>

Sackville
Mount Allison University
Ralph Pickard Bell Library
Government Documents
Sackville, New Brunswick E0A 3C0
<http://www.mta.ca/library>

Newfoundland
St. John's
Memorial University
Queen Elizabeth II Library
Government Documents
St. John's, Newfoundland A1B 3Y1
<http://www.mun.ca/library/>

Northwest Territories
Yellowknife
Legislative Library
Northwest Territories
Legislative Assembly Building
P.O. Box 1320,
Yellowknife, Northwest Territories X1A 2L9

Nova Scotia
Halifax
Dalhousie University
Killam Memorial Library
Government Documents
Halifax, Nova Scotia B3H 4H8
<http://www.library.dal.ca>

Wolfville
Acadia University
Library
Wolfville, Nova Scotia B0P 1X0
<http://www.acadiau.ca/vaughn/home.htm>

Ontario
Guelph
University of Guelph
Library
Government Documents
Guelph, Ontario N1G 2W1
<http://www.lib.uoguelph.ca/>

Hamilton
Hamilton Public Library
Government Documents
P.O. Box 2700, Station "A"
55 York Boulevard
Hamilton, Ontario L8N 4E4
<http://www.hpl.hamilton.on.ca>

McMaster University
Mills Memorial Library
Government Documents
Hamilton, Ontario L8S 4L6
<http://www.mcmaster.ca/library/>

Kingston
Queen's University
Joseph S. Stauffer Library
Documents Unit
Kingston, Ontario K7L 5C4
<http://stauffer.queensu.ca>

London
University of Western Ontario
D.B. Weldon Library
Government Documents
London, Ontario N6A 3K7
<http://max.lib.uwo.ca/pick.me.html>

North York
York University
Scott Library
Government Documents
4700 Keele Street
North York, Ontario M3J 2R6
<http://www.library.yorku.ca/>

Ottawa
Library of Parliament
Bibliothèque du Parlement
Official publications
Publications officielles
Centre Block
Ottawa, Ontario K1A 0A9
<http://www.parl.gc.ca>

National Library of Canada
Bibliothèque nationale du Canada
Canadian Acquisitions/Acquisitions canadiennes
Government Documents/Documents officiels
Ottawa, Ontario K1A 0N4

Université d'Ottawa / University of Ottawa
Bibliothèque Morisset / Morisset Library
65 University Private
Ottawa, Ontario K1N 9A5
<http://www.uottawa.ca/library/>

Sudbury
Laurentian University
J.N.Desmarais Library
Access Services Department
Ramsey Lake Road
Sudbury, Ontario P3E 2C6

Thunder Bay
Lakehead University
Chancellor Paterson Library
Government Documents
955 Oliver Road
Thunder Bay, Ontario P7B 5E1
<http://www.lakeheadu.ca/~librwww/home.html>

Thunder Bay Public Library
Government Documents
216 South Brodice Street
Thunder Bay, Ontario P7E 1C2

Toronto
Legislative Library
Parliament Buildings
Collection Development
99 Wellesley Street West
Room 2350
Toronto, Ontario M7A 1A9

Metropolitan Toronto
Reference Library
Government Documents
Collection Development and Acquisitions
789 Young Street
Toronto, Ontario M4W 2G8
<http://www.mtrl.toronto.on.ca/>

University of Toronto
Robarts Library
Government Documents
Toronto, Ontario M5S 1A5
<http://library.utoronto.ca/www.librarylist.html>

Waterloo
University of Waterloo
Dana Porter Arts Library
Government Documents
Waterloo, Ontario N2L 3G1
<http://www.lib.uwaterloo.ca/>

Windsor
Windsor Public Library
Government Documents
850 Ouellette Avenue
Windsor, Ontario N9A 4M9

Prince Edward Island

Charlottetown

Government Services Library

Government Documents

P.O.Box 2000

Charlottetown, Prince Edward Island C1A 7N8

Quebec

Montreal

Bibliothèque centrale de Montréal

Département des sciences sociales

1210, rue Sherbrooke est

Montréal, Quebec H2L 1L9

Concordia University Libraries

Publications officielles

1455, boulevard Maisonneuve ouest

Montréal, Quebec H3G 1M8

<http://juno.concordia.ca/>

McGill University

Library

Government Documents

3459 McTavish Street

Montreal, Quebec H3A 1Y1

<http://www.library.mcgill.ca/govdocs/gdocweb.htm>

Services documentaires multimédia

Publications officielles fédérales

75, rue port-Royal est, bureau 300

Montréal, Quebec H3L 3T1

Université de Montréal
Bibliothèque des sciences humaines et sociales
Publications officielles
Case Postale 6128, Succursale Centre-ville
3000, chemin de la Tour
Montréal, Quebec H3C 3J7
<http://www.umontreal.ca/Udem/biblio.html>

Université du Québec à Montréal
Bibliothèque
Publications Gouvernementales et internationales
1200, rue Berri
Montréal, Quebec H2L 4S6

Quebec
Bibliothèque de l'Assemblée nationale
Service des documents officiels canadiens
Edifice Pamphile
Québec, Quebec G1A 1A5
<http://www.assnat.qc.ca>

Université Laval
Bibliothèque générale
Section des acquisitions
Cité universitaire
Québec, Quebec G1K 7P4
<http://www.bibl.ulaval.ca>

Sherbrooke
Université de Sherbrooke
Bibliothèque générale
Publications gouvernementales
Cité universitaire
2500, boulevard Universitaire
Sherbrooke, Quebec J1K 2R1
<http://www.biblio.usherb.ca/>

Saskatchewan

Regina
Saskatchewan Legislative Library
234 Legislative Building
Regina, Saskatchewan S4S 0B3

Saskatoon

University of Saskatchewan Libraries
Government Publications Department
3 Campus Drive
Room 230 Main Library
Murray Building
Saskatoon, Saskatchewan S7N 5A4
<http://library.usask.ca/>

Germany

Staatsbibliothek zu Berlin
Publications officielles (Canada)
Preussischer Kulturbesitz Abteilung
Amtdruckschriften und Tausch
Internationaler Amtlicher
Schriftentausch
Potsdamer Str. 33
Paketausgabe
D-10785 Berlin

Japan

National Diet Library
Library Cooperation Department
10-1 Nagatacho 1 chome
Chiyoda-ku
Tokyo100

United Kingdom

British Library
Acquisition Unit
H & SS Overseas English
Boston Spa Wetherby
West Yorkshire LS23 7BQ, England
<http://portico.bl.uk:70/1/portico/directry>

USA

Library of Congress
Canadian Government Documents
Exchange and Gift Division
Washington, District of Columbia 20540-4200
<http://www.loc.gov>