Court No. T-2149-85

Federal Court of Canada
Trial Division

IN THE MATTER OF an application by the Applicant for a review of the decision of the Minister of Employment and Immigration.

AND IN THE MATTER OF the Access to Information Act, S.C. 1980-81-82-83, C. 111, S. 41 (the "Act)

BETWEEN:

JOHN A. ROBERTSON

Applicant

- and -

THE MINISTER OF EMPLOYMENT AND IMMIGRATION

Respondent

REASONS FOR ORDER

THE ASSOCIATE CHIEF JUSTICE:

This application for review brought pursuant to S. 41 of the Access to Information Act came on for hearing at Toronto, Ontario, on June 23, 1986. A further meeting with counsel was held on May 4, 1987. The application raises two issues. First, is the information to which access is sought personal information as defined in S. 3 of the Privacy Act, S.C. 1980-81-82-83, C. 111, and thereby not subject to disclosure in accordance with S. 19(1) of the Access to Information Act? Second, if the information is personal information, does the public interest in its disclosure outweigh any invasion of privacy, thereby permitting disclosure under S. 8(2)(m) of the Privacy Act?

At the commencement of the hearing, I suggested that the matter would unfold more intelligently if I were to examine the document and, in turn, if it could be examined by counsel for the applicant. There was no objection and upon the undertaking of counsel not to disclose the contents to anyone including his clients, we proceeded on that basis. It was also appropriate to order that the hearing be conducted in camera pursuant to S. 47(1) of the Access to Information Act.

The facts are not in dispute. The applicant is a Commissioner of the Trenton Public Utilities Commission (the Utilities Commission). In November, 1984, the Utilities Commission applied to the respondent Ministry for a Canada Works Grant. The respondent required that a letter from any Union representing employees at the place of work accompany the application. In January, 1985, the Utilities Commission was advised that the application had been denied. They subsequently learned that the International Brotherhood of Electrical Workers, Local 636 (the Union) had written a letter to the Ministry opposing their grant application. On February 8, 1985, Mr. Robertson requested access to the Union's letter under S. 4(1) of the Access to Information Act. On March 7, 1985, the respondent advised him that certain parts of the information were exempt from disclosure under S. 19(1) of the Access to Information Act and S. 3 of the Privacy Act. These portions were severed from the record and the remainder of the information was released to the applicant. Mr. Robertson filed a complaint with the Information Commissioner concerning the denial of access to the severed portions of the record. An investigation was conducted and on August 13, 1985, the

Information Commissioner reported to the applicant that the information had properly been withheld from disclosure under S. 19(1) of the Access to Information Act. The Utilities Commission filed an application for review under S. 41. On consent of the parties on April 9, 1986, I ordered that John A. Robertson be substituted for the Utilities Commission as applicant in this review.

Because of the complexity of some of the arguments raised at the hearing of this matter, I convened an informal meeting of counsel on May 4, 1987 and invited further oral and written submissions. At that time, I was advised by counsel that the grievance which had initially given rise to this application had been resolved and that the whole text of the letter in question had been disclosed. This application has not been withdrawn, however, and must therefore be disposed of.

S. 48 of the Access to Information Act places upon the respondent the burden of establishing that the head of the government institution is authorized to refuse to disclose the information requested:

> 48. In any proceedings before the Court arising from an application under section 41 or 42, the burden of establishing that the head of a government institution is authorized to refuse to disclose a record requested under this Act or a part thereof shall be on the government institution concerned.

The respondent argues that such authority exists in S. 19 of the Access to Information Act:

> 19.(1) Subject to subsection (2), the head of a government institution shall refuse to disclose any record requested under this Act that contains personal information as defined in section 3 of the

Privacy Act.

> (2) The head of a government institution may disclose any record requested under this Act that contains personal information if
> (a) the individual to whom it relates consents to the disclosure;
> (b) the information is publicly available; or
> (c) the disclosure is in accordance with section 8 of the Privacy Act.

Counsel contends that the information in issue is personal information as defined in S. 3(c), (e) and (i) of the Privacy Act:

> 3. In this Act,
> "personal information" means information about an identifiable individual that is recorded in any form including, without restricting the generality of the foregoing,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (e) the personal opinions or views of the individual except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual by a government institution or a part of a government institution specified in the regulations,
>
> (i) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual,

The respondent's submission on this issue is divided into two parts. One, based on S. 3(e), relates to two paragraphs in the body of the letter. The other, based on SS. 3(c) and 3(i), relates to the "complimentary closing" to the letter.

The Minister is denying the applicant access to two paragraphs in the letter on the ground that they contain the personal opinions or views of the author concerning the Commission's attempts to acquire grants and the grant system

in general and, therefore, contain personal information as defined in S. 3(e). Counsel argues that the opinions expressed in those two paragraphs are in fact the opinions of the author and not the Union on whose behalf the letter was written. Furthermore, he contends that the exception in S. 3(e) is not applicable since the opinions expressed are not about another individual or about a proposal for a grant to be made to another individual by a government institution. In accordance with S. 41 of the Public Utilities Act, R.S.O. 1980, C. 423, public utilities Commissions are bodies corporate. The respondent argues that for the purposes of S. 3(e) the word "individual" should be interpreted to mean a "natural person" as opposed to a body corporate, partnership or other artificial person. In support of this interpretation he relies on several cases dealing with the meaning of the word "individual" in various statutory provisions [see Port Credit Realty Limited v. M.N.R. [1937] Ex. C.R. 88, Settled Estates Ltd. v. M.N.R. [1960] C.T.C. 173, dealing with income tax provisions; Langille et al v. Toronto-Dominion Bank 40 N.R. 67 (S.C.C.), Re Witchekan Lake Farms Ltd. 50 D.L.R. (3d) 314 (Sask. C.A.), dealing with S. 30, Bankruptcy Act; R. v. Colgate Palmolive Ltd., 5 C.P.R. (2d) 179 (Ont. Co. C.) dealing with the Canadian Bill of Rights].

The applicant concedes that on a strict interpretation of S. 3(e) of the Privacy Act, the two paragraphs in the body of the letter withheld from disclosure do contain personal information. He endeavoured to persuade me, however, that in the phrase " ... except where they are about another individual or about a proposal for a grant ... made to another individual by a government

institution ... " the word "individual" should not be given a restrictive meaning. It should be interpreted to include both natural and artificial persons and, therefore, to extend to the Trenton Public Utilities Commission. He argues that in each of the cases cited by the respondent, in determining the meaning of the word "individual" the Court had regard to the context in which the word appeared in the entire legislative scheme. Therefore, the purpose and scope of the particular legislation in which the provision containing the word "individual" is found, must be examined before either a restrictive or expanded meaning is ascribed to it.

The purpose of the Access to Information Act is set out in S. 2(1):

> 2.(1) The purpose of this Act is to extend the present laws of Canada to provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, that necessary exceptions to the right of access should be limited and specific and that decisions on the disclosure of government information should be reviewed independently of government.

The statute therefore establishes Mr. Robertson's right of access to the information in issue. Any exception to that right must be limited and specific. The specific exception relied upon by the Minister is that the information is personal information as defined in the Privacy Act (S. 19(1)) Access to Information Act). The applicant contends, however, that to restrict the interpretation of the word "individual" in S. 3(e) of the Privacy Act to natural persons would result in an absurdity and would frustrate the intent of that Act as set out in S. 2:

> 2. The purpose of this Act is to extend the present laws of Canada that protect the privacy of individuals with respect to personal information about themselves held by a government institution and that provide individuals with a right of access to such information.

As I understand his argument, if an individual presents a government institution with his personal opinions or views on the proposal for a grant to be made to a natural person, those opinions would be subject to access under S. 4(1) of the Access to Information Act. If, however, the opinion is about a proposal for a grant to an artificial person, the opinion is personal information about its author and exempt from disclosure under S. 19(1). Counsel argues that the legislators could not have intended such an absurd result and consequently, the word "individual" must include both natural and artificial persons.

The two main purposes of the Access to Information and Privacy Acts are to provide access to information under the control of a government institution and to protect the privacy of individuals with respect to personal information about themselves. These principles do not appear to me to require protection from disclosure for a submission made by a public body to another public body about a publicly funded programme. The issue is whether the Acts provide protection for an individual who adds to such a public submission his own personal opinion on the subject and his signature.

I have examined the letter in question, including the excised portions, and have concluded that, in the context of making a required submission on behalf of the Union, the author has responded by making general comments

that are quite appropriate under the circumstances and should be made public. He has signed the letter as a Union official and has directed further inquiries on the Union position to another Union official whose name and telephone number he has provided. However, in this Union submission, the author has included two paragraphs, clearly indicated as distinct from the rest of the letter by use of the word "personally", in which he has expressed his own observations based on personal experiences and opinions. These paragraphs constitute personal, confidential information about the author. They can be severed from the rest of the letter, and they are precisely the kind of information the Privacy Act was enacted to protect.

Since the excised paragraphs contain the personal opinion of an individual, they are covered by S. 3(e). The opinion expressed is not about an individual or a grant to an individual so they do not fall within the exception to that section. They were properly withheld from disclosure.

In view of the fact that the issue here has largely been resolved by the disclosure of the whole letter, I do not propose to deal with the applicant's argument concerning the meaning of the word "individual" in S. 3(e). Counsel submits that the use of that word, given its ordinary meaning, results in the absurd distinction that opinions concerning grants to natural persons must be disclosed while opinions about grants to corporate bodies may be withheld. I do not believe that I must decide this question in order to dispose of this application. I remain concerned, however, about the discrepancy which is apparently inherent in the wording of the section. It may be that the

legislation needs clarification. I will consequently ask the Registrar to send a copy of these Reasons to the Minister for his consideration.

Having determined that the excised portions of the text were properly withheld, it becomes easier to deal with the "complimentary closing" which was also withheld. The "complimentary closing" of the letter in this case consists of the author's name, position and unit identification within the Union. To the extent that this information appeared together with his personal opinions, it was appropriate for the respondent to refuse its disclosure as it clearly formed personal information under SS. 3(c) and 3(i):

> (c) any identifying number, symbol or other particular assigned to the individual.
>
> . . .
>
> (i) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual.

In view of my determination on the right to refuse disclosure of the author's personal comments, however, his name and identification now appear only in connection with the correspondence on behalf of the Union. Since the author's name no longer appears with other personal information relating to him, and since the other identifying "particulars" now relate solely to the author's authority to write on behalf of the Union, SS. 3(c) and (i) do not provide justification for refusing access to the complimentary closing of the letter in issue.

Finally, and in the alternative, the applicant raises a "public interest" argument which arises through S. 19(2)(c) of the Access to Information Act:

> 19(2)The head of a government institution may disclose any record requested under this Act that contains personal information if
>
> . . .
>
> (c) the disclosure is in accordance with section 8 of the Privacy Act.

The relevant portions of section 8 of the Privacy Act provide:

> 8.(1) Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be disclosed by the institution except in accordance with this section.
>
> (2) Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed
>
> . . .
>
> (m)for any purpose where, in the opinion of the head of the institution,
> (i)the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure. . .

As I understand the argument, it is that in order to properly prepare counter-submissions for its grant application, the applicant should know not only the Union's position and the identity of the author who filed it on behalf of the Union, but the contents of the excised paragraphs as well. I disagree. If there is a public interest here it is fully served by disclosure of the text of that portion of the letter which is written on behalf of the Union. This now includes the author's signature which could, of course, be important in case a question should arise as to whether the Union submissions were properly authorized. Having determined that the rest of the letter

is personal information, I do not see that the public interest requires its disclosure simply for the purpose of assisting the applicant to prepare further submissions.

An order will go, therefore, for the disclosure of the whole of the letter with the exception of the second and fourth paragraphs. In the circumstances, there will be no order as to costs.

O T T A W A

August 12, 1987

A.C.J.

Federal Court of Canada

Court No. T-2149-85

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JOHN A. ROBERTSON

Applicant

— *and* —

THE MINISTER OF EMPLOYMENT AND IMMIGRATION

Respondent

REASONS FOR ORDER

Court No. T-2149-85

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OTTAWA, WEDNESDAY, THE 12TH DAY OF AUGUST, 1987

PRESENT: THE ASSOCIATE CHIEF JUSTICE

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O R D E R

UPON application for review pursuant to S. 41 of the Access to Information Act, upon reading the material filed, upon hearing counsel for all parties at Toronto, Ontario, on June 23, 1986 and again on May 4, 1987, and for the Reasons for Order given this day,

IT IS HEREBY ORDERED that the whole of the letter shall be disclosed with the exception of the second and fourth paragraphs.

A.C.J.