



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER 162

Appeal 880186

Stadium Corporation of Ontario Limited



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

INTERIM ORDER

This appeal was received pursuant to subsection 50(1) of the Freedom of Information and Protection of Privacy Act, 1987 (the "Act") which gives a person who has made a request for access to a record under subsection 24(1) a right to appeal any decision of a head under the Act to the Information and Privacy Commissioner.

The facts of this case and the procedures employed in making this Interim Order are as follows:

1. On November 20, 1987, the requester wrote to Stadium Corporation of Ontario Limited (the "institution") seeking access to the following information, "in the spirit of Bill 34":
 - a) all contracts to build, manage and control the stadium, and all sources of financing both utilized and committed to the development, including public and private sources.
 - b) all special arrangements, privileges the private concerns in the stadium corporation will receive, and any changes in ownership composition of the corporation since inception
 - c) all briefing notes sent to the responsible Minister(s), or Cabinet, on the subjects of stadium financing, corporate structure, construction, activities or other matters.
 - d) all agreements with those originally owning the land
 - e) all agreements, bylaws on how the stadium and corporation is or will run.
 - f) projected figures, studies of stadium use, and of stadium traffic patterns_flows.
 - g) your file/record inventory list, and the 1985 to 1987 meeting minutes of the stadium board.
 - h) any major planning changes to the stadium since planning begun, these costs; and general expenditures to date and those projected for the stadium.

- i) all documents on areas of expected revenues, expected expenses once the stadium is in operation_for a ten year period or as long as such projections are made.
2. By letter dated December 2, 1987, the institution acknowledged receipt of this request and advised the requester that "...the implementation date for Bill 34 (the Act) is January 4 (sic), 1988. We will be glad to process your request at that time and advise you of any costs that may be applicable."
3. By letter dated January 18, 1988, the institution advised the requester that it needed to extend the time limit to consider the request to March 31, 1988.
4. On March 31, 1988, the institution sent a letter to the requester enclosing a copy of the institution's 1986 financial statements and general information on the SkyDome complex. The letter advised the requester, "You can well appreciate that we are not prepared to send out originals of documents such as agreements, contracts, leases and invoices." A cost estimate for duplicating a number of records was attached. The total estimated cost was \$877.60. (\$817.60 to photocopy 4,088 pages at .20 cents per page and \$60, being "3 hrs labour @ 20.00/hr")
5. By letter dated April 29, 1988, the requester advised the institution that he would be in Toronto the week of May 16, 1988 and would like to view the records during that week. The requester subsequently attended at the premises of the institution and was given an opportunity to view the records. He identified the parts of the records he was interested in by affixing yellow "post_it" notes thereon. He requested that these pages be photocopied and sent to him.
6. By letter dated June 8, 1988, the requester advised the institution that he was enclosing a deposit of \$50.00 for copies of the record that he had previously identified. He also stated his concern that three weeks had gone by since he saw the records in question and

requested that the records he selected for copying be sent to him by courier. He stated he would pay the remaining costs after receipt of the records.

7. The institution stated that the \$50.00 cheque sent by the requester represented a partial payment toward the cost of copying, courier service and employee office time and that it was assessing its total cost and would advise the requester shortly of any amounts owing. Also at that time, the institution stated that it would be able to complete the balance of the requester's request.
8. After receiving 186 pages of records, the requester, by letter dated June 9, 1988, notified my office that more records remained outstanding. On the basis of the appellant's letter, my office opened an appeal file.
9. By letter dated June 24, 1988, I gave notice of this appeal to the institution and the appellant.
10. By letters dated June 25, 1988, the appellant advised the institution and my office of records which had been requested that were still outstanding from the original request. The appellant identified the following records as still outstanding:
 1. 1985_1988 Board meeting minutes.
 2. April 23/87 Briefing Binder _ various segments of 6 sections.
 3. Four Sets of Binders of Agreement _ various matters.
 4. 10 year operating forecast sheets.
 5. Multi_year Capital Plan sheets.
11. By letter dated June 30, 1988, the institution advised the appellant of its decisions concerning certain records being released in total, certain records being withheld in total and reasons therefor.

12. In the same letter, the institution advised the appellant that it would inform him in due course of the total costs to date.
13. By letter dated July 4, 1988, the appellant advised the institution that he had received 15 more pages but that dozens of pages were missing, including records which had been viewed.
14. By letter dated July 7, 1988, the institution provided the Appeals Officer with copies of records to which access was denied as indicated in the letter of June 30, 1988 to the appellant.
15. By letter dated July 18, 1988, the Appeals Officer asked the institution to send this office a copy of the original request and to include copies of all correspondence between the institution and the appellant, to date.
16. By letter dated July 22, 1988, the institution sent copies of all correspondence with the appellant to the Appeals Officer and confirmed to her that the appellant was given an opportunity to view the records when he visited its offices

during the week of May 16 to 20, 1988. In addition, the institution stated that it had advised the appellant on June 30, 1988 that access was being denied to certain other records copies of which had been forwarded to the Appeals Officer on July 7, 1988.
17. On August 24, 1988, the Appeals Officer met with the Freedom of Information and Privacy Co_ordinator and Legal Counsel for the institution and went over the exemptions that had been claimed. The Appeals Officer asked the institution to go over the records again to see whether more material could be released to the appellant. The institution indicated that it would reconsider its decision and would disclose further information.

18. By letter dated August 31, 1988, the Appeals Officer wrote to the appellant and advised him that the institution would be releasing further material to him. The Appeals Officer requested that the appellant contact the Appeals Officer to advise what documents were missing, if any.
19. By letter dated September 15, 1988, the Appeals Officer asked the institution when the revised decision would be available, both to the appellant and to my office. The institution advised that the decision would be forwarded shortly.
20. By letter dated October 4, 1988, the Appeals Officer wrote to the head inquiring as to the status of the revised decision.
21. By letter to the appellant dated October 6, 1988 and by letter to the Appeals Officer dated October 7, the institution advised that it was disclosing more records, some with severances and others in their totality.
22. In the letter to the appellant, the institution advised that he was required to pay:
 - (a) the cost of preparation of the records for disclosure \$96.00,
 - (b) costs of processing and copying records _ \$46.80 (20 cents per page for 234 pages),
 - (c) shipping cost of \$4.00.

The total estimated fee was \$146.80. The institution stated it had considered subsection 57(3) of the Act and decided that no circumstances existed under which discretion could be exercised to waive all or any part of the fee. As a result, the head required a deposit in the amount of \$73.40.

23. By letter dated October 25, 1988, the appellant wrote to the head of the institution enclosing \$23.40 "without prejudice" to view the package of 234 pages. The appellant repeated that he was not prepared to pay the preparation fees for the records in question.

By letter dated October 25, 1988, the appellant informed my office that he was appealing the preparation fees portion of the fee estimate prepared by the head.

24. By letter dated November 8, 1988, the Appeals Officer wrote to the appellant asking him to review the package of records of 234 pages and requesting that he advise the Appeals Officer of any records originally tabbed by him that he had not received.
25. By letter dated November 10, 1988, the institution wrote to the appellant, acknowledging receipt of his cheque for \$23.40 as a partial payment for the copying of certain records. The records sent contained approximately 230 pages.
26. By telephone conversation on November 24, 1988, the appellant informed the Appeals Officer that certain records had still not been sent to him. The appellant repeated that he was appealing all severances and also the courier and preparation fees.
27. By letter dated December 9, 1988, the Appeals Officer wrote to the institution listing and requesting a number of records which the appellant had alleged were missing and asking the institution to clarify its position on fees and to provide the "missing" records.
28. By letter dated January 5, 1989, the head advised the appellant and my office that further records were being disclosed in whole or with severances.
29. On January 6, 1989, the appellant informed the Appeals Officer that all the records he had requested during his Toronto visit of May 16, 1988 had now been accounted for by either total denial of access, severance or disclosure. Appendix "A" is a list of all records or parts of records disclosed to the appellant initially and after the appeal was filed. Appendix "B" lists all the records or parts of records withheld by the institution and the corresponding provisions of the Act claimed as exemptions by the institution in its representations.

30. Although mediation efforts resulted in considerable information being released to the appellant, total settlement was not effected. The appellant insisted that since he had been given access pursuant to section 30 of the Act, he was not willing to pay for any of the fees for record preparation as he had viewed the records without severances.

31. By letter dated July 13, 1989, I notified the institution and the appellant that I was conducting an inquiry to review the decision of the head. In accordance with my usual practice, the Notice of Inquiry was accompanied by a report prepared by the Appeals Officer. This Appeals Officer's Report is intended to assist the parties in making their representations concerning the subject matter of the appeal. The Appeals Officer's Report outlines the facts of the appeal and sets out questions which paraphrase those sections of the Act which appear to the Appeals Officer, or any of the parties, to be relevant to the appeal. These sections of the Act paraphrased in the report include those exemption sections cited by the head in refusing access to a record or a part thereof. The report indicates that the parties, in making their representations to the Commissioner, need not limit themselves to the questions set out in the report.

32. I received representations from both the institution and the appellant, and have considered them in making my Order.

The issues arising in this appeal are as follows:

- A. Whether affording the appellant the opportunity to view the records in the circumstances arising in this appeal amounts to giving the appellant access to the records for the purposes of section 30 of the Act.

If Issue A is answered in the negative, the following issues arise:

- B. Whether the head properly applied the discretionary exemption provided by section 19 of the Act in withholding a record or part of a record.

- C. Whether the head properly applied the discretionary exemption provided by subsection 13(1) in withholding a record or part of a record.

- D. Whether the head properly applied the discretionary exemption provided by subsections 18(1)(c), (e) and (g) of the Act in withholding a record or part of a record.
- E. Whether any information severed from the record and withheld from disclosure falls within the mandatory exemption provided by subsections 17(1)(a), (b) and (c) of the Act.
- F. If the answer to either issue B, C or D is in the affirmative, whether the head properly exercised his discretion when denying access to the exempted information.
- G. Whether there is a compelling public interest in the disclosure of the records which clearly outweighs the purpose of the exemptions claimed under sections 13, 17 and 18 pursuant to section 23 of the Act
- H. Whether the head's decision to charge fees under subsection 57(1) of the Act, is in accordance with the terms of the Act.
- I. Whether the head's decision not to waive fees under subsection 57(3) of the Act, is in accordance with the terms of the Act.

It is important to note at the outset that the purposes of the Act as outlined in section 1(a) and (b) are as follows:

The purposes of this Act are,

- (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
 - (i) information should be available to the public,
 - (ii) necessary exemptions from the right of access should be limited and specific, and
 - (iii) decisions on the disclosure of government information should be reviewed independently of government; and
- (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

Furthermore, section 53 of the Act provides that the burden of proof that a record, or a part thereof, falls within one of the specified exemptions in the Act lies with the head of the institution. Third parties who rely on the exemption provided

by section 17 of the Act to prohibit disclosure of certain parts of the record therefore share with the institution the onus of proving that this exemption applies to the record or parts of the record.

ISSUE A: Whether affording the appellant the opportunity to view the records in the circumstances arising in this appeal amounts to giving the appellant access to the records for the purposes of section 30 of the Act.

Section 30 of the Act states:

30.__(1) Subject to subsection (2), a person who is given access to a record or a part thereof under this Act shall be given a copy thereof unless it would not be reasonably practicable to reproduce the record or part thereof by reason of its length or nature, in which case the person shall be given an opportunity to examine the record or part thereof in accordance with the regulations.

(2) Where a person requests the opportunity to examine a record or a part thereof and it is reasonably practicable to give the person that opportunity, the head shall allow the person to examine the record or part thereof in accordance with the regulations.

(3) Where a person examines a record or a part thereof and wishes to have portions of it copied, the person shall be given a copy of those portions unless it would not be reasonably practicable to reproduce them by reason of their length or nature.

In his representations, the appellant submits as follows:

Section 30 is crucial to my case for unfettered access once the right to view was granted but should be read in conjunction with Section 1(i), Section 28(i) (sic) where the head would have had to invoke certain exemptions before access was granted, Section 10(i) (sic) where I was granted access without severances/exemptions. Discretionary exemptions cannot all apply after viewing as discretion was already applied...

Counsel for the institution submitted:

The Appellant had requested that the Institution produce to him a large number of documents (approximately 4,000 pages). The Act had only recently been in force, and the Institution wanted to ensure that the Appellant was treated fairly and that his request was responded to reasonably and expeditiously. As a result, the Institution allowed the Appellant to view the documents or indexes for the purpose of allowing the Appellant to focus and narrow the scope of his request. The Institution did not intend to allow the Appellant access to the documents as contemplated by the Act in order to require production of same, but rather, considered the visit by the Appellant to be a preliminary step which would then result in a more focused request for documents by the Appellant, which would be in the best interest of all parties. It is highly unlikely that the Appellant was able to view all of the records during his short visits to the Institution's offices; in fact, the Appellant simply 'tabbed' indexes in a number of cases.

It is my view that while the appellant may not have read every page of the records, he was given an opportunity to do so, and was able to identify most of the records he wanted. I think it is fair to say that the appellant received some degree of disclosure of the information contained in at least some of the records. However, this is not the only matter that is germane to my consideration as to whether the appellant was granted access for the purposes of section 30.

The institution claims inexperience and unfamiliarity with the terms of the Act which had only recently come into effect at the time the appellant visited the institution. While the institution does not dispute that the appellant has viewed the records, its contention is that this did not amount to a decision to give him access but was something that was done to help him focus his request.

I have reviewed certain correspondence of the institution and in my view, this correspondence confirms the intentions of the institution in allowing the appellant to view the records. In addition, this was the first request dealt with by the institution under the Act and the unfamiliarity of the

institution with the Act is confirmed by the fact that the institution did not give notice to third parties as required by section 28 of the Act before allowing the appellant to view the records. I have taken all of these matters into account in concluding that, in these circumstances, access for the purposes of section 30 of the Act, was not granted to the appellant.

ISSUE B: Whether the head properly applied the discretionary exemption provided by section 19 of the Act in withholding a record or part of a record.

Section 19 of the Act reads as follows:

A head may refuse to disclose a record that is subject to solicitor_client privilege or that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation.

The records or parts of records that have been withheld under this section are records #2 and #14 as listed in Appendix B. Record #2 is a letter to the institution from the institution's outside legal counsel regarding settlement and execution of a loan agreement between the institution and the Canadian Imperial Bank of Commerce. The severance in record #14 is a portion of the minutes of the Board of Directors of the institution in which is summarized a statement made by legal counsel who was present at the meeting. Clearly, the second part of the exemption provided by section 19 is not applicable in this case. The records in question were not prepared by or for Crown counsel for use in giving legal advice or in contemplation of litigation. Therefore, I must determine whether the common law solicitor_client privilege applies to these records.

As I have indicated in Order 49 (Appeal Numbers 880017 and 880048) dated April 10, 1989, at page 13, there are two branches to the solicitor_client privilege under common law and they are:

1. all communications, verbal or written, of a confidential character, between a client and a legal adviser directly related to the seeking, formulating or giving of legal advice or legal assistance (including the legal adviser's working papers directly related thereto) are privileged; and
2. papers and materials created or obtained especially for the lawyer's brief for litigation, whether existing or contemplated are privileged. ("litigation privilege")

To be exempt under the first branch of the common law solicitor_client privilege, a record must satisfy the following four_part test:

1. There must be a written or oral communication;
2. The communication must be of a confidential nature;
3. The communication must be between a client (or his agent) and a legal adviser;
4. The communication must be directly related to seeking, formulating or giving legal advice.

I have reviewed the records in issue and find that they are covered by the first branch of the common law solicitor_client privilege. Therefore, records #2 and #14 qualify for exemption under section 19.

ISSUE C: Whether the head properly applied the discretionary exemption provided by subsection 13(1) in withholding a record or part of a record.

Subsection 13(1) of the Act reads as follows:

A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

The records or parts of records withheld pursuant to this provision are the following: 2, 14, 16, 28, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42 and 44 as listed in Appendix "B". I have found under Issue B that records #2 and #14 qualify for exemption under section 19. Therefore I will not deal with those records under this issue.

In Order 94 (Appeal Number 890137), dated September 22, 1989, I noted that the general purpose of the exemption contained in subsection 13(1) of the Act was "to protect the free flow of advice and recommendations within the deliberative process of government decision_making and policy_making." In Order 118 (Appeal Number 890172), dated November 15, 1989, I also noted that "advice" must contain more than mere information. In that Order I stated, "advice

pertains to the submission of a suggested course of action, which will ultimately be accepted or rejected by its recipient during a deliberative process."

It is the institution's position that subsection 13(1) of the Act would apply to exempt the severances made to the Minutes as they reveal advice given or recommendations made by Committees, Consultants or Directors, to the institution. Having carefully reviewed each severance and subjected it to the above mentioned test, I find that only severances #33, 34 and 35 qualify for exemption. Severances #16, 28, 32, 36, 37, 38, 39, 40, 41, 42 and 44 contain information only; they do not contain specific advice or recommendations relating to the deliberative processes of the institution and, therefore, do not qualify for exemption under subsection 13(1).

ISSUE D: Whether the head properly applied the discretionary exemption provided by subsections 18(1)(c), (e) and (g) of the Act in withholding a record or part of a record.

Subsection 18(1) of the Act provides as follows:

A head may refuse to disclose a record that contains,

- (a) trade secrets or financial, commercial, scientific or technical information that belongs to the Government of Ontario or an institution and has monetary value or potential monetary value;
- (b) information obtained through research by an employee of an institution where the disclosure could reasonably be expected to deprive the employee of priority of publication;
- (c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
- (d) information where the disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario;

- (e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution or the Government of Ontario;
- (f) plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public;
- (g) information including the proposed plans, policies or projects of an institution where the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person.

Broadly speaking, section 18 was drafted to protect certain interests, economic and otherwise, of the Government of Ontario and/or institutions. Subsections 18(1)(b), (c), (d) and (g) all take into consideration the consequences which could result from disclosure of a record. Subsections 18(1)(a), (e) and (f) are largely concerned with the content of the record, rather than the consequences of disclosure.

The institution has claimed subsections 18(1)(c), (e) and (g) apply. I will deal with each of these exemptions individually.

18(1)(c)

The records or parts of records withheld under subsection 18(1)(c) are as numbered and described in Appendix "B". They are 1 to 13 inclusive, 15 to 53 inclusive, and 55 to 62 inclusive. I have found under Issue B that record #2 qualifies for exemption under section 19 and, under Issue C, that records #33, 34 and 35 qualify for exemption under subsection 13(1). Therefore, I will not deal with those records under this issue.

In its representations, the institution submitted a theoretical framework and argument in support of its position:

This institution acknowledges the spirit and purpose of that Act as set out in Section 1(a) and wants to make every effort to ensure the purpose of the Act is fulfilled. However, certain anomalies exist in its application to this Institution.

Unlike every other institution to which this Act applies, this Institution must compete openly and directly in the private marketplace. The fact that this Institution does not operate in a monopoly environment should be considered by the Commission in the application of the Act to this Institution. This Institution has direct competitors in the marketplace, such as the CNE, Maple Leaf Gardens, Varsity Stadium, and other facilities in Toronto, as well as similar facilities across the continent. Any particular party, group, organization or franchise will only deal with this Institution if it can offer the most attractive and competitive facility of its kind. It is qualitatively different from other government agencies which operate in the private sector. Even an agency such as Ontario Hydro does not compete in the marketplace in a way equivalent to the Institution. A group wishing to deal with a sports/entertainment multi-purpose facility has many options. Such a group can, and will, seek out the most appealing of the alternatives. The SkyDome, being just one such alternative, cannot afford, in a business sense, to have its competition gain an upper hand in the market place. Such a situation would result from competitors, suppliers, advertisers, etc., gaining specific information on the internal operation of this Institution.

Having explained its unique situation the institution then went on to state:

Many, if not all, of the exemptions sought by the Institution in the present appeal arise from such considerations. For the purposes of this appeal, the Institution has applied certain policies consistent with the above-mentioned considerations. Most of the exemptions sought in this appeal fall under one or more of three principles. Firstly, we submit the Institution should not release specific details of financial, commercial or business arrangements with other parties. Disclosure of this type of information would give competitors of the Institution an unfair bargaining advantage in the competition for business. Secondly, we submit the Institution should not release records which disclose long-term operating, capital or income forecasts. Knowledge of such information would give third parties dealing, or competing, with the Institution an unfair advantage in the market place. Thirdly, we submit the Institution should not disclose the names of companies or groups that have failed to successfully negotiate an arrangement with the Institution. Further, the details of such negotiations should not be released. Companies justifiably fear negative public relations and the release of such information would prevent full and open negotiations in the future.

The institution also provided me with two schedules by which it documented its current financial projections and future financial projections, should there arise a minimal drop-off in revenue of 10% due to a deterioration in the institution's competitive position. These schedules purport to document the economic consequences flowing to the institution if release of the records at issue in this appeal would result in a drop-off in revenue of 10%.

To qualify for exemption under subsection 18(1)(c), the record in question must contain information the disclosure of which could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution. In considering the evidence required to support a claim of reasonable expectation of harm or loss under section 17, I have indicated in Orders 36 and 70 (Appeal Number 880030), dated December 28, 1988, and (Appeal Number 880264), dated June 29, 1989 respectively, that the evidence must be "detailed and convincing". In my view, the standard of proof is no less stringent under section 18.

A review of the records exempted under subsection 18(1)(c) supports the institution's statement that the records contain:

- (a) details of financial, commercial or business arrangements with other parties,
- (b) long term financial forecasts and/or,
- (c) names of companies or groups that have failed to successfully negotiate an arrangement or a contract with the institution.

With regard to (a), the institution asserts that disclosure of the information would give competitors of the institution an unfair bargaining advantage in the competition for business, and with regard to (b) that knowledge of long term financial forecast(s) would give third parties dealing or competing with the institution an unfair advantage in the marketplace. With regard to (c), the institution's contention is that if failed negotiations were to be revealed, companies would justifiably fear negative public relations and the release of such information would then prevent full and open negotiations with the institution in the future.

The institution has cited subsection 18(1)(c) as its grounds for severing information which it claims reveals "failed negotiations". The head submits that subsection 18(1)(c) applies to this type of information. He states:

If all parties who fail in their negotiations with the Institution are faced with the prospect of public disclosure of such failure, such parties from the start would be more hesitant to engage in negotiations. In

addition, undue pressure would be put upon the Institution and any parties negotiating with the Institution to successfully conclude agreements, as any failed negotiations which come to light would reflect badly on the parties involved. Negotiations of that nature in private enterprise are usually held in the strictest of confidence. Third parties would be more wary of negotiating with the Institution if any and/or all details of such negotiations, whether failed or successful were to become public knowledge. This in itself may make all negotiations conducted on behalf of the Institution far more difficult. This is especially true when one considers the fact that any party wishing to make use of a sports/entertainment facility has other private and public options to it in the Toronto area and beyond.

The difficulty with the institution's general argument alone is that even if I were to find that the severances in question contained the types of information noted in the principles cited by the institution (i.e., details of financial, commercial or business arrangements, long term financial forecasts, or details of failed negotiations), there must still be evidence that disclosure of this kind of information could reasonably be expected to result in the harms contemplated by subsection 18(1)(c). Whereas I have been provided with schedules which forecast the institution's competitive position over a period of time if it suffered a 10% drop_off in revenue, I have not been provided with evidence to suggest that such a 10% drop_off "could reasonably be expected" to result if the information in question were released. The representations of the institution in support of the specific severances did not bridge the evidentiary gap in its general or theoretical argument.

I have carefully reviewed the records exempted under subsection 18(1)(c) and I find that only record #1 in Appendix B contains information the disclosure of which could reasonably be expected to prejudice the economic interests of the institution or its competitive position under subsection 18(1)(c).

For the rest of the records exempted under this subsection, the institution has not presented "detailed and convincing" evidence of harm. The records themselves do not contain any information where, in my view, disclosure could reasonably be expected to result in prejudice to the economic interests or competitive position of the institution.

18(1)(e)

Subsection 18(1)(e) has been used by the institution to withhold the following records as numbered and described in Appendix "B": #1, 9 and 10 in their totality and to severed portions of records 20 to 27 inclusive, 35 to 44 inclusive, 49 to 52 inclusive and 54.

I have already found that record #1 qualifies for exemption under subsection 18(1)(c) and that record #35 qualifies for exemption under subsection 13(1). Therefore, I will not deal with those records under this issue.

As I stated in Order 87 (Appeal Number 880082), dated August 24, 1989, the test for exemption under subsection 18(1)(e) is as follows:

1. The record contains positions, plans, procedures, criteria or instructions;
and
2. This record is intended to be applied to negotiations; and
3. These negotiations are being carried on or will be carried on in the future;
and
4. These negotiations are being conducted by or on behalf of an institution or the government of Ontario.

The timing of negotiations is crucial to the application of subsection 18(1)(e).

I have reviewed the records in issue and find that while some of the records contain positions, plans, procedures, criteria or instructions for negotiations, I have not been provided with any evidence that any of these negotiations are being carried on, or will be carried on in the future, with the exception of record #21, as listed in Appendix "B".

Having carefully reviewed all of the records withheld under subsection 18(1)(e) my conclusion is that only the severance made in record #21, as listed in Appendix "B", falls under this exemption. The institution has not discharged the onus of proof with respect to the other records for which this exemption has been cited.

18(1)(g)

The institution has used subsection 18(1)(g) to withhold records #23, 24, 25, 26, 27, 29, 43 and 44 as listed in Appendix "B".

Subsection 18(1)(g) provides that a head may refuse to disclose a record that contains information including the proposed plans, policies or projects of an institution where the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person.

I have examined the records in question in this issue and find that while some of the severances contain proposed plans or projects of the institution, I have not been provided with any evidence that disclosure of any of the records could reasonably be expected to result in a premature disclosure of a pending policy decision or in undue financial benefit or loss to a person. I therefore find that this subsection does not apply to the records in issue.

In addition, it should be noted that records #4, 5, 6, 23, 24, 25, 26, 27, 56, 57, 58, 59, 60, 61 and 62 are publicly available at the Federal Court Office in Toronto as a result of having been filed in the court case entitled Stadium Corporation of Ontario Limited and Dome Consortium Investment Inc. v. Wagon Wheel Concession Ltd. (Court File #T_1205_88). The Appeals Officer was able to obtain copies of these records from the court by simply asking for them.

ISSUE E: Whether any information severed from the record and withheld from disclosure falls within the mandatory exemption provided by subsections 17(1)(a), (b) and (c) of the Act.

Subsection 17(1) of the Act reads as follows:

17.__(1) A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied; or
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency.

...

The records withheld under this exemption are listed and described in Appendix "B" as 1 to 12 inclusive, in their totality, and records 13, 15, 16, 17, 23, 24, 25, 26, 27, 46, 47, 48, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61 and 62.

Almost all of the records or parts of records for which the institution claimed the exemption under section 17 were also withheld under section 13 or 18. I have already found that records #1 and 2 qualify for exemption under other exemptions in the Act and I have found records 4, 5, 6, 23, 24, 25, 26, 27, 56, 57, 58, 59, 60, 61 and 62 are publicly available at the Federal Court Office in Toronto. Therefore, I will not consider the application of section 17 to these records and I will deal only with records 3, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 46, 47, 48, 49, 51, 52, 53, 54 and 55 under Issue E.

The institution did not notify all the third parties of the request and did not elicit from them their views as to disclosure of the information contained in the records for which the section 17 exemption was claimed. Most of these third parties were never given a copy of the records at issue. Even though I have decided that some of the records for which exemption under section 17 has been claimed do not qualify for exemption under other sections of the Act (most notably

section 18), in the absence of representations from the third parties, I feel it would be inappropriate for a decision to be made on the application of section 17 to the records in issue.

The institution has also indicated that it was not prepared to disclose to the third parties some of the records for which section 17 was cited as an exemption because the institution had also cited exemptions under sections 13, 18 and 19 to these records. As I have already determined the application of sections 13, 18 and 19 to the records in issue I feel the institution can now disclose the relevant severances or records

to the third parties so that their views as to disclosure may be expressed and the institution is hereby ordered to do so in accordance with the instructions contained in the summary of this Interim Order appearing on pages 27_28.

ISSUE F: If the answer to either issue B, C or D is in the affirmative, whether the head properly exercised his discretion when denying access to the exempted information.

Subject to the final determination of the issue relating to the severances made pursuant to section 17 of the Act (which will be addressed in the final Order), I have found that records or parts of records identified in Appendix "B" as 1, 2, 14, 21, 33, 34 and 35 fall within the exemptions under sections 13, 18 and 19.

Despite a request to do so, the institution has not provided me with any representations outlining the factors which were considered by the head when exercising his discretion to exempt the information under any of these provisions.

As it is the responsibility of the Commissioner to ensure that the head has properly exercised his discretion under the Act, the final determination of Issue F will be deferred until representations from the head regarding the exercise of his discretion have been received. Therefore, I order the head to exercise his discretion under sections 13, 18 and 19 of the Act with respect to records #33, 34 and 35 (exempted under subsection 13(1)), record #1 (exempted under subsection

18(1)(c)), record #21 (exempted under subsection 18(1)(e)) and records #2 and 14, (exempted under section 19).

I further order the head to exercise his discretion within twenty (20) days of the date of this Interim Order, and to provide my office with written notification of his decision regarding the exercise of discretion and accompanying reasons within five (5) days of the date of that decision.

ISSUE G: Whether there is a compelling public interest in the disclosure of the records which clearly outweighs the purpose of the exemptions claimed under sections 13, 17 and 18 pursuant to section 23 of the Act

Section 23 of the Act provides:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20 and 21 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

I have found under Issues C and D that records #1, 21, 33, 34 and 35 qualify for exemption pursuant to sections 13 and 18 of the Act. I have also found that records #2 and 14 qualify for exemption pursuant to section 19 of the Act, however, section 23 does not apply to section 19 of the Act. Therefore, my consideration of Issue G is restricted to records #1, 21, 33, 34 and 35.

As indicated above in Issue F, I have ordered the head to exercise his discretion with respect to those records, which were withheld under the discretionary exemptions contained in sections 13 and 18. As a result, the final determination of Issue G will be deferred until the head has made representations regarding the exercise of his discretion.

ISSUE H: Whether the head's decision to charge fees under subsection 57(1) of the Act, is in accordance with the terms of the Act.

Subsection 57(1) states as follows:

Where no provision is made for a charge or fee under any other Act, a head may require the person who makes a request for access to a record or for correction of a record to pay,

- (a) a search charge for every hour of manual search required in excess of two hours to locate a record;
- (b) the costs of preparing the record for disclosure;
- (c) computer and other costs incurred in locating, retrieving, processing and copying a record; and
- (d) shipping costs.

In addition to the \$96.00 for preparation of records for disclosure the head charged \$46.80 (\$0.20/page for 234 pages), and \$4.00 shipping costs. It was the appellant's submission that he should not have to pay the preparation costs of \$96.00 for severing records or parts of records as he had viewed unsevered records during his visit to Toronto the week of May 16_19, 1988. He also asked the head to reconsider the courier fees in view of the institution's delay in sending their requested records. As well, he objected to the fee of \$50.00 for the first set of 186 pages.

The head submits that the assessment of fees is limited to copying and postage costs plus staff time to physically sever and prepare for disclosure the various documents requested by the appellant.

I find that the head is entitled to charge fees for costs incurred in circumstances outlined in subsection 57(1). The shipping and copying charges claimed by the head in this case fall within the scope of subsections 57(1)(c) and (d) and are allowable, subject to consideration of the fee waiver provisions of subsection 57(3). Similarly, the costs of preparing the record, estimated in accordance with subsection 5(2) of Ontario Regulation 532/87, are allowable under subsection 57(1)(b).

ISSUE I: Whether the head's decision not to waive fees under subsection 57(3) of the Act, is in accordance with the terms of the Act.

Subsection 57(3) provides:

A head may waive the payment of all or any part of an amount required to be paid under this Act where, in the head's opinion, it is fair and equitable to do so after considering,

- (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);
- (b) whether the payment will cause a financial hardship for the person requesting the record;
- (c) whether dissemination of the record will benefit public health or safety;
- (d) whether the record contains personal information relating to the person who requested it; and
- (e) any other matter prescribed in the regulations.

The head has indicated that subsection 57(3) was considered and waiver of fees refused. The head submitted that the "Appellant did not provide sufficient information" under this subsection to justify the waiver of fees.

In the circumstances of this case, I find that there are insufficient grounds for a waiver of fees under subsection 57(3), and the decision of the head to charge the fee is upheld.

In summary, the Interim Order is as follows:

1. the institution shall disclose to the appellant the records or parts of records listed in Appendix "A" as "Additional Records which the Institution Stated can now be Released: and the following records or parts of records listed in Appendix "B": #4, 5, 6, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 50, 56, 57, 58, 59, 60, 61 and 62;

2. the institution shall disclose these records to the appellant within ten (10) days of the payment of the fees by the appellant and notify my office as to the date of such disclosure within five (5) days of the date on which disclosure is made;
3. the institution shall notify the third parties to whom the records or parts of records for which section 17 was claimed as an exemption relate and which are not publicly available, being the following records or parts of records listed in Appendix "B": #3, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 46, 47, 48, 49, 51, 52, 53, 54 and 55;
4. the institution shall notify the third parties to whom the records or parts of records listed in paragraph #3 above relate, providing them with copies of the records in question. The institution is to notify these parties within twenty (20) days of the date of this Interim Order and copies of the notices are to be sent to my office within five (5) days of the date on which they are provided to the third parties. The third parties will be contacted directly to elicit representations from them as to the application of section 17 of the Act; and
5. the institution shall provide my office with representations as to the exercise of discretion under subsections 13(1) and 18(1) and section 19 in respect of the following records or parts of records listed in Appendix "B": #1, 2, 14, 21, 33, 34 and 35, within twenty (20) days of the date of this Interim Order.

Original signed by: _____
Sidney B. Linden
Commissioner

_____ April 24, 1990
Date

APPENDIX A

Appeal Number 880186

RECORDS RELEASED BY THE INSTITUTION IN TOTAL

1. Evaluation of various proposals for retractable stadium roof dated December 20, 1984 (37 pages).
2. Analysis of transportation and parking issues concerning the dome stadium dated June 13, 1986 (37 pages).
3. Principal stadium agreement first closing_index of closing documents dated May 8, 1986.
4. Principal stadium agreement interim and second closings_index of closing documents dated August 20, 1986 and November 25, 1986 (4 pages).
5. Additional member closing_index of closing documents dated February 16, 1987 to August 5, 1987 (8 pages).
6. Principal stadium agreement pages 1, 35, 76 (3 pages).
7. Advertising and promotion rights agreements (14 pages).
8. Acknowledgement, Treasurer of Ontario.
9. Dome Consortium Investments Incorporated dated May 20, 1986 (1 page).
10. Canadian National Railway dated May 30, 1986 (1 page).
11. Canadian Imperial Bank of Commerce dated May 20, 1986 (1 page).
12. Lottario Grant Agreement dated March 29, 1985 (3 pages).
13. Financing between Stadium Corporation of Ontario Limited and Canadian Imperial Bank of Commerce dated July 21, 1987 (index and table of contents _ 14 pages).
14. Memorandum of understanding between Stadium Corporation of Ontario Limited and the Treasurer of Ontario and Minister of Economics dated March 26, 1986 (6 pages).
15. Various briefing notes prepared by Stadium Corporation of Ontario Limited (17 pages).

16. Principal stadium agreement _ Schedule B _ Appendix 2 _ Product/Services (3 pages).

Preferred supplier status agreements:

17. Ainsworth Electric Company Limited (1 page).
18. Bell Canada Enterprises Incorporated (2 pages).
19. Canadian National Railway Company (1 page).
20. Canadian Imperial Bank of Commerce (1 page).
21. Coca_Cola Limited (1 page).
22. Ford Motor Company of Canada Limited (1 page).
23. George Weston Limited (2 pages).
24. Hiram Walker & Sons Limited (2 pages).
25. Imasco Limited (2 pages).
26. Imperial Oil Limited (2 pages).
27. McDonald's Restaurants of Canada Limited (1 page).
28. Merrill Lynch Canada Incorporated (1 page).
29. Nabisco Brands Limited (2 pages).
30. Olympia & York Developments Limited (2 pages).
31. Trilon Financial Corporation (1 page).
32. Xerox Canada Incorporated (1 page).
33. Preferred supplier status rules and procedures _ Schedule A (7 pages).
34. Agreement with John Labatt Limited dated February 19, 1987 and June 16, 1987.
35. Agreements with Carling O'Keefe Breweries of Canada Limited dated February 19, 1987 and February 27, 1987.

36. Agreements with Molson Breweries of Canada Limited dated May 29, 1987 and June 1, 1987.
37. Briefing materials entitled "Dome Booster Card Program".
38. Briefing materials entitled "Attendance Projections".
39. Briefing materials entitled "Situation Analysis".
40. Briefing materials entitled "Stadia Boxes/Capacity/Leases".
41. Briefing materials entitled "Dome Wall of Fame".
42. Briefing materials entitled "Ellis_Don Fixed Price Contract".

43. Briefing materials entitled "Ellis_Don Fixed Price Contract" and "Pumping Station Construction Management Contract".
44. Opinion Letter of Fasken and Calvin dated July 21, 1987.
45. Official Supplier Agreement with Ainsworth Electric Limited dated March 20, 1987.
46. Minutes January 28, 1985.
47. Minutes February 4, 1985.
48. Minutes February 18, 1985.
49. Minutes April 24, 1985.
50. Minutes May 1, 1985.
51. Minutes November 13, 1986.
52. Minutes April 9, 1987.
53. Minutes May 7, 1987.
54. Minutes August 20, 1987.

RECORDS RELEASED IN PART

55. Minutes February 11, 1985.
56. Minutes April 10, 1985.
57. Minutes April 16, 1986.
58. Minutes May 15, 1986.
59. Minutes September 12, 1986.
60. Minutes February 12, 1987.
61. Minutes February 26, 1987.
62. Minutes May 22, 1987.
63. Minutes June 11, 1987.
64. Minutes October 8, 1987.
65. Minutes October 16, 1987.
66. Minutes December 17, 1987.
67. Reed Stenhouse Limited insurance policy #10446.

68. Agreement with Argonaut Football Club dated October 31, 1986.
69. Agreement with Toronto Blue Jays Baseball Club and McDonald's Restaurants of Canada dated May 8, 1986.
70. Agreement with Toronto Blue Jays Baseball Club dated May 14, 1986.

ADDITIONAL RECORDS WHICH THE INSTITUTION STATED CAN NOW BE RELEASED

71. Minutes May 15, 1986: page 3, paragraph 5.
72. Minutes May 15, 1986: page 5, paragraph 2.
73. Minutes February 12, 1987: page 6, paragraphs 6 and 7.
74. Minutes February 12, 1987: page 7, paragraphs 1 and 2.

75. Minutes February 26, 1987: page 6, paragraph 2.
76. Minutes May 22, 1987: page 3, paragraph 1.
77. Minutes June 11, 1987: page 5, paragraph 4.
78. Projected construction costs and funding record originally denied.

APPENDIX B

Appeal Number 880186

**LIST OF RECORDS OR PARTS OF RECORDS WITHHELD BY THE
INSTITUTION
SECTIONS CITED ARE THOSE CITED IN THE INSTITUTION SUBMISSIONS**

WITHHELD IN TOTAL

1. Briefing materials entitled "Operating Analysis and Projections" including 10_year financial projections. ss. 17(1)(a) & 18(1)(c)(e)
2. Reporting Letter of Fasken and Calvin dated October 19, 1987.
ss. 13, 17(1), 18(1)(c), 19
3. Letter of Fasken and Calvin to Revenue Canada dated March 13, 1986.
ss. 17(1), 18(1)(c)
4. Letter of Fasken and Calvin to Revenue Canada dated April 1, 1986.
ss. 17(1), 18(1)(c)
5. Letter of Fasken and Calvin to Revenue Canada dated April 16, 1986.
ss. 17(1), 18(1)(c)
6. Letter of Fasken and Calvin to Revenue Canada dated May 5, 1986.
ss. 17(1), 18(1)(c)
7. Letter of Revenue Canada dated April 22, 1986.
ss. 17(1), 18(1)(c)
8. Letter of Revenue Canada dated May 7, 1986.
ss. 17(1), 18(1)(c)
9. Briefing Materials:Blue Jays and Argos.
ss. 17, 18(1)(c)(e)
10. Briefing Materials:Blue Jays and Argonauts dated April 24, 1986.
ss. 17, 18(1)(c)(e)
11. Letter Agreement _ April 8, 1987 _ with Carling O'Keefe.
ss. 17, 18(1)(c)
12. Letter Agreement _ July 9, 1987 _ with John Labatts.
ss. 17, 18(1)(c)

**RECORDS WITHHELD IN PART WITH CORRESPONDING EXEMPTIONS
CLAIMED IN THE INSTITUTION SUBMISSIONS**

13. Minutes February 11, 1985
page 2, paragraph 2
ss. 17(1)(a), 18(1)(c)
14. Minutes April 10, 1985
page 3, paragraphs 1 _ 3
ss. 13(1), 19
15. Minutes April 16, 1986
page 4, paragraph 1
ss. 17(1), 18(1)(c)
16. Minutes April 16, 1986
page 4, paragraph 4
ss. 13, 17(1), 18(1)(c)
17. Minutes April 16, 1986
page 6, paragraph 5
ss. 17(1), 18(1)(c)
18. Minutes May 15, 1986
page 4, paragraph 3
ss. 18(1)(c)
19. Minutes September 12, 1986
page 2, paragraph 4
ss. 18(1)(c)
20. Minutes September 12, 1986
page 5, paragraph 1
ss. 18(1)(c)(e)
21. Minutes February 12, 1987
page 7 paragraph 3
ss. 18(1)(c)(e)
22. Minutes February 26, 1987
page 6, paragraph 3
ss. 18(1)(c)(e)

23. Minutes May 22, 1987
page 2, paragraph 2
ss. 17(1)(a), 18(1)(c)(e)(g)
24. Minutes May 22, 1987
page 2, paragraph 3
ss. 17(1)(a), 18(1)(c)(e)(g)
25. Minutes May 22, 1987
page 2, paragraph 4
ss. 17(1)(a), 18(1)(c)(e)(g)
26. Minutes May 22, 1987
page 2, paragraph 5
ss. 17(1)(a), 18(1)(c)(e)(g)
27. Minutes May 22, 1987
page 2, paragraph 6
ss. 17(1)(a), 18(1)(c)(e)(g)
28. Minutes June 11, 1987
page 6, paragraph 3
ss. 18(1)(c)
29. Minutes October 8, 1987
page 5, paragraph 6
ss. 18(1)(g)
30. Minutes October 8, 1987
page 6, paragraph 1
ss. 18(1)(c) (The name of TSN disclosed but not the financial details)
31. Minutes October 26, 1987
page 5, paragraph 2
ss. 18(1)(c)
32. Minutes December 17, 1987
page 4, paragraph 7
ss. 13(1), 18(1)(c)
33. Minutes December 17, 1987
page 5, paragraph 1
ss. 13(1), 18(1)(c)

34. Minutes December 17, 1987
page 5, paragraph 2
ss. 13(1), 18(1)(c)
35. Minutes December 17, 1987
page 5, paragraph 4
ss. 13(1), 18(1)(c)(e)
36. Minutes December 17, 1987
page 5, paragraph 5
ss. 13(1), 18(1)(c)(e)
37. Minutes December 17, 1987
page 6, paragraph 1
ss. 13(1), 18(1)(c)(e)
38. Minutes December 17, 1987
page 6, paragraph 2
ss. 13(1), 18(1)(c)(e)
39. Minutes December 17, 1987
page 6, paragraph 3
ss. 13(1), 18(1)(c)(e)
40. Minutes December 17, 1987
page 6, paragraph 4
ss. 13(1), 18(1)(c)(e)
41. Minutes December 17, 1987
page 6, paragraph 5
ss. 13(1), 18(1)(c)(e)
42. Minutes December 17, 1987
page 6, paragraph 6
ss. 13(1), 18(1)(c)(e)
43. Minutes August 20, 1987
page 7, paragraph 1 (first full sentence severed)
ss. 18(1)(c)(e) (g)
44. Minutes August 20, 1987
page 8, paragraph 1
ss. 13(1), 18(1)(c)(e)(g)

45. Reed Stenhouse Insurance Policy
page 2, "premium and adjustment"
ss. 18(1)(c)
46. Reed Stenhouse Insurance Policy
page 11, "insurers"
ss. 17(1), 18(1)(c)
47. Reed Stenhouse Insurance Policy
page 14, "insurers"
ss. 17(1), 18(1)(c)
48. Reed Stenhouse Insurance Policy
page 13, "premium"
ss. 18(1)(c)
49. Agreement with Argonaut Football Club dated October 31, 1986
pages 10, 11 & 12
ss. 17(1), 18(1)(c)(e)
50. Agreement with Argonaut Football Club dated October 31, 1986
pages 13 & 14, paragraph 12
ss. 18(1)(c)(e)
51. Agreement with Argonaut Football Club dated October 31, 1986
page 14, paragraph 13 (certain figures)
ss. 17, 18(1)(c)(e)
52. Agreement with Argonaut Football Club dated October 31, 1986.
page 15, paragraph 14(b)
ss. 17(1), 18(1)(c)(e)
53. Agreement with Argonaut Football Club dated October 31, 1986.
pages 16 & 17, paragraph 17(a)
ss. 17(1)(c), 18(1)(c)
54. Agreement with Argonaut Football Club dated October 31, 1986.
pages 17, 18 & 19, paragraph 18(a)
ss. 17(1), 18(1)(e)
55. Agreement with Argonaut Football Club dated October 31, 1986.
page 21, paragraph 26
ss. 17, 18(1)(c)

56. Agreement with Toronto Blue Jays Baseball Club and McDonald's Restaurants dated May 8, 1986.
page 4, paragraph 4
ss. 17(1), 18(1)(c)
57. Agreement with Toronto Blue Jays Baseball Club and McDonald's Restaurants dated May 8, 1986.
page 7, paragraph 4
ss. 17(1), 18(1)(c)
58. Agreement with Toronto Blue Jays Baseball Club and McDonald's Restaurants dated May 8, 1986.
page 10, paragraph 6b(iii)
ss. 17(1), 18(1)(c)
59. Agreement with Toronto Blue Jays Baseball Club dated May 14, 1986.
page 2, paragraph "B1, B2, B3"
ss. 17(1)(a), (b), 18(1)(c)
60. Agreement with Toronto Blue Jays Baseball Club dated May 14, 1986.
page 3, paragraph "B4 & B5"
ss. 17(1) (a), (b), 18(1)(c)
61. Agreement with Toronto Blue Jays Baseball Club dated May 14, 1986.
pages 4 & 5, paragraph "E"
ss. 17(1)(a), (b), 18(1)(c)
62. Agreement with Toronto Blue Jays Baseball Club dated May 14, 1986.
page 5, paragraph "E"
ss. 17(1)(a), (b), 18(1)(c)

APPENDIX C

Appeal Number 880186

RECORDS ORDERED RELEASED TO THE APPELLANT

1. Letter of Fasken and Calvin to Revenue Canada dated April 1, 1986.
2. Letter of Fasken and Calvin to Revenue Canada dated April 16, 1986.
3. Letter of Fasken and Calvin to Revenue Canada dated May 5, 1986.
4. Agreement with Toronto Blue Jays Baseball Club and McDonald's Restaurants dated May 8, 1986.
page 4, paragraph 4
5. Agreement with Toronto Blue Jays Baseball Club and McDonald's Restaurants dated May 8, 1986.
page 7, paragraph 4
6. Agreement with Toronto Blue Jays Baseball Club and McDonald's Restaurants dated May 8, 1986.
page 10, paragraph 6b(iii)
7. Agreement with Toronto Blue Jays Baseball Club dated May 14, 1986.
page 2, paragraph "BI, BII and BIII"
8. Agreement with Toronto Blue Jays Baseball Club dated May 14, 1986.
page 3, paragraph "BIV & BV"
9. Agreement with Toronto Blue Jays Baseball Club dated May 14, 1986.
page 4, paragraph "E"
10. Agreement with Toronto Blue Jays Baseball Club dated May 14, 1986.
page 5, paragraph "E"
11. Minutes May 15, 1986 _ page 4, paragraph 3
12. Minutes September 12, 1986 _ page 2, paragraph 4

13. Minutes September 12, 1986 _ page 5, paragraph 1
14. Minutes February 12, 1987 _ page 6, paragraphs 6 and 7
15. Minutes February 12, 1987 _ page 7, paragraphs 1 and 2
16. Minutes February 26, 1987 _ page 6, paragraphs 2 and 3

17. Minutes May 22, 1987
page 2, paragraph 2
18. Minutes May 22, 1987
page 2, paragraph 3
19. Minutes May 22, 1987
page 2, paragraph 4
20. Minutes May 22, 1987
page 2, paragraph 5
21. Minutes May 22, 1987
page 2, paragraph 6
22. Minutes June 11, 1987 _ page 6, paragraph 3
23. Minutes August 20, 1987 _ page 7, paragraph 1 (1st full sentence)
24. Minutes August 20, 1987 _ page 8, paragraph 1
25. Minutes October 8, 1987 _ page 5, paragraph 6
26. Minutes October 8, 1987 _ page 6, paragraph 1
27. Minutes October 26, 1987 _ page 5, paragraph 2
28. Minutes December 17, 1987 _ page 4, para 7
29. Minutes December 17, 1987 _ page 5, paragraph 5
30. Minutes December 17, 1987 _ page 6, paragraph 1
31. Minutes December 17, 1987 _ page 6, paragraph 2

32. Minutes December 17, 1987 _ page 6, paragraph 3
33. Minutes December 17, 1987 _ page 6, paragraph 4
34. Minutes December 17, 1987 _ page 6, paragraph 5
35. Minutes December 17, 1987 _ page 6, paragraph 6
36. Reed Stenhouse Insurance _ page 2, "premium and adjustment"
37. Board of Directors Minutes, May 15, 1986:
 - i) page 3, paragraph 5
 - ii) page 5, paragraph 2
38. Board of Directors Minutes, February 12, 1987:
 - i) page 6, paragraphs 6 and 7
 - ii) page 7, paragraphs 1 and 2
39. Board of Directors Minutes, February 26, 1987:
 - i) page 6, paragraph 2
40. Board of Directors Minutes, May 22, 1987:
 - i) page 3, paragraph 1
41. Board of Directors Minutes, June 11, 1987:
 - i) page 5, paragraph 4
42. Projected construction costs and funding record originally denied.
43. Agreement with Toronto Argonaut Football Club dated October 31, 1986.
page 14, paragraph 13 (certain figures)

APPENDIX D

Appeal Number 880186

RECORDS FOR WHICH SECTION 17 WAS CLAIMED BY THE HEAD AND WHERE THE INSTITUTION IS ORDERED TO SEND THIRD PARTY NOTICES

1. Letter of Fasken and Calvin to Revenue Canada dated March 13, 1986.
2. Letter of Revenue Canada dated April 22, 1986.
3. Letter of Revenue Canada dated May 7, 1986.
4. Briefing Materials: Blue Jays and Argos.
5. Briefing Materials: Blue Jays and Argonauts (April 24, 1986).
6. Letter Agreement: April 8, 1987 with Carling O'Keefe.
7. Letter Agreement: July 9, 1987 with John Labatts.
8. Minutes February 11, 1985 _ page 2, paragraph 2.
9. Minutes April 16, 1986 _ page 4, paragraph 1.
10. Minutes April 16, 1986 _ page 4, paragraph 4.
11. Minutes April 16, 1986 _ page 6, paragraph 5.
12. Reed Stenhouse Insurance Policy _ page 11, "insurers".
13. Reed Stenhouse Insurance Policy _ page 14, "insurers".
14. Reed Stenhouse Insurance Policy _ page 13, "premium".
15. Agreement with Argonaut Football Club dated October 31, 1986 _ pages 10, 11 and 12.
16. Agreement with Argonaut Football Club dated October 31, 1986 _ page 14, paragraph 13 (certain figures).
17. Agreement with Argonaut Football Club dated October 31, 1986 _ page 15, paragraph 14 (b).

18. Agreement with Argonaut Football Club dated October 31, 1986 _ pages 16 and 17, paragraph 17(a).
19. Agreement with Argonaut Football Club dated October 31, 1986 _ pages 17, 18 and 19, paragraph 18(a).
20. Agreement with Argonaut Football Club dated October 31, 1986 _ page 21, paragraph 26.