



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-53

Appeal Numbers:

**M-910081, M-910089, M-910099,
M-910129, M-910145, M-910146,
M-910185, M-910188, and M-910249**

Windsor Board of Commissioners of Police



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ORDER

BACKGROUND:

The record at issue in these appeals is an investigation report concerning the Windsor Board of Education which was prepared by the Windsor Police Service (the Police) as a result of an investigation conducted in 1989 and 1990.

There are nine appeals, involving four appellants and two requesters, in which disclosure of this record is at issue. Eight are third party appeals in which the appellants are appealing the decision of the Police to disclose parts of the record. The ninth appeal is by one of the two requesters appealing a decision by the Police to deny access to other portions of the record.

The Windsor Board of Education (the Board) has brought an action in the Ontario Court (General Division) against a number of defendants. During the course of processing the appeals, this office was notified by one of the parties of the existence of two orders of the Honourable Mr. Justice McGarry, Ontario Court (General Division), dated November 20, 1991 and December 4, 1991, respectively. The orders deal with the record at issue in these appeals.

The court orders require the Police to produce the record for inspection and restrict disclosure and dissemination of the record to the parties to the court action and their counsel, to the extent necessary for the preparation for trial. The December 4, 1991 order, which clarifies the earlier order, states in part:

THIS COURT ORDERS that the report [the record] referred to in the Order of November 20, 1991 may be released to counsel for the plaintiff and defendants for the purpose of preparation for trial. Further release of any information contained in the report shall be permitted only to the extent necessary for such preparation and shall be limited to the parties to this action and such experts as required for preparation for trial. **Any further dissemination shall be considered as contempt of this order.** [emphasis added].

It is my view that before dealing with the substantive issues arising in these appeals, I must address the preliminary issue of the effect, if any, of the two orders issued by Mr. Justice McGarry on my authority to review the decisions made under the Act by the Police. This is the sole issue that will be addressed in this order.

All of the parties to the appeals, including the Board, were invited to submit written submissions on this preliminary issue. Representations were received from a third party appellant and from the Board, and these representations were distributed to all of the parties for comment. Comments were received from two appellants and the Board.

Generally speaking, persons who are not parties to a particular court action are not bound by an order of the court arising in the action. McCully v. Maritime United Farmers' Co-op Ltd. (1928) 54 N.B.R. 322 (C.A.). However, both the common law and the Ontario Rules of Civil Procedure provide that an injunctive order or judgment may be enforced against a non-party.

An injunctive order is a judgment or order requiring a person to do an act, (other than the payment of money), or to abstain from doing an act. One method of enforcement against a person refusing or neglecting to obey an injunctive order or judgment is by an application for a determination that the person who is not obeying the order is in contempt of court.

The Ontario High Court, in Canada Metal Co. Ltd. v. Canadian Broadcasting Corp. et al. (No. 2) (1975) 48 D.L.R. (3d) 641, 4 O.R. (2d) 585 at p. 603, sets out the general rules governing contempt of injunctive court orders:

- 1) "An order for an injunction must be implicitly observed and every diligence must be exercised to observe it to the letter": Halsbury's Laws of England, 3rd ed., vol. 21, p. 433, para. 915.
- 2) The respondents were obliged to obey not only the letter, but also the spirit of the injunction: Grand Junction Canal Co. v. Dimes (1849) 17 Sim. 38, 60 E.R. 1041; Halsbury's Laws of England, **ibid** p.434, para. 919; Attorney General v. Great Northern R. Co. (1850) 4 De G. & Sm. 75, 64 E.R. 741.
- 3) Knowledge of the existence of an injunction is sufficient to obligate persons to obey it, and the order need not have been issued and entered in order to bind persons having knowledge of it: Halsbury's Laws of England, **ibid** p.433, para 914.
- 4) **Persons who are not parties to an action and who are, therefore, not named as being bound by the injunction, still must abide by it if they know of the substance or nature of the injunction and it is not necessary that the words "person or persons having notice of this order" be contained in the terms of the injunction in order for it to bind them: Re Tilco Plastics Ltd. v. Skurjat et al.; A.G.Ont. v. Clark et al., [1966] 2 O.R. 547, [1967] 1 C.C.C. 131, 57 D.L.R. (2d) 596 ... [emphasis added]**

Therefore, it appears to me that persons who are not parties to, but who have knowledge of an injunctive order must obey the order.

The Board submits that the orders of Mr. Justice McGarry are injunctive in nature. I agree. The orders are injunctive in that they require production of the record by the Windsor Police

Department and restrict dissemination of the record to that necessary for litigating the issues before the court.

In my view, since I have had notice of the court orders, I am bound by them and may do nothing in processing these appeals which would render the orders ineffectual. In the normal course of an appeal, procedural fairness requires that some degree of disclosure be made to the parties of the type of record at issue. It is also my view that my jurisdiction to review the decisions of the Police, which is derived from the Municipal Freedom of Information and Protection of Privacy Act, is not affected by the court orders. However, in practical terms, the court orders restrict how these appeals may be processed.

Disclosure of the nature of the record to the parties in the course of conducting my inquiry cannot be made. As well, if I were to find that the exemptions claimed by the parties resisting disclosure do not apply to the record, either in whole or in part, I may not order unconditional disclosure of the record. To order partial or full disclosure of the record or to refer to the record in any way which would reveal its content, in my view, may well constitute contempt of court. Simply stated, for the purposes of processing these appeals, I am not prepared to test the contempt waters.

Although the appeals could be held in abeyance, pending the outcome of the court action, the nature of the matter being litigated is such that its conclusion may not result in the lifting or variation of the court orders. Thus, I may never be in a position to deal unrestrictedly with the record at issue. For these reasons, it is my view that no practical purpose would be served in proceeding with these appeals at this time.

Accordingly, my decision is to conclude these appeals and close the files. I wish to make it clear that I have made no decision on the substantive issues relating to the exemptions claimed in these appeals. Therefore, should any of the parties wish to make a further request for the same record, **res judicata** should not be an issue. If the court orders are varied or lifted, the parties will not be prohibited from appealing any decision of the Police relating to the substantive issues.

ORDER:

I order that these appeals be discontinued and that the appeal files be closed.

Original signed by:
Tom Wright
Commissioner

October 16, 1992