



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

# **ORDER P-1026**

**Appeal P-9500083**

**Ontario Casino Corporation**



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## **BACKGROUND:**

On October 6, 1992, the Honourable Marilyn Churley, then Minister of Consumer and Commercial Relations (the Minister), announced the decision of the provincial government to proceed with a pilot project for the establishment of a casino in the Windsor area. The Casino Project Team was established in late summer 1992 with a mandate to provide advice and support for all activities associated with bringing casinos to Ontario. The team consisted of individuals seconded from various government ministries and reported to the Minister.

On April 19, 1993, the Ministry of Consumer and Commercial Relations issued a Request for Proposal (the RFP) from the private sector calling for: (i) the financing, design and construction of the permanent casino; and (ii) the operation of the businesses to be carried out in the permanent casino. The RFP stated that the successful proponent would be expected to operate an interim casino until the permanent casino was established. The RFP also set out the selection process. A selection committee, comprised of four provincial Deputy ministers was appointed to review and evaluate the proposals received in response to the RFP.

On September 20, 1993, the selection committee announced a short list of four firms. On December 2, 1993, the selection committee announced its selection of Windsor Casino Ltd. (WCL) as the proponent with whom the province would enter into exclusive negotiations to finalize agreements with respect to the permanent casino.

As contemplated under the RFP, the Ontario Casino Corporation (the OCC) was established as a Crown corporation pursuant to the Ontario Casino Corporation Act, 1993 (the OCC Act) to manage and conduct the casino business and to represent the government in negotiations with WCL. The OCC took over where the Casino Project Team left off. The OCC was included as an institution under the Freedom of Information and Protection of Privacy Act (the Act) by virtue of Ont. Reg. 305/94.

During the period of December 2, 1993 to May 14, 1994, the OCC, WCL and others negotiated the Operating Agreement for the interim casino. The Interim Operating Agreement was ultimately executed, and the interim casino opened on May 14, 1994. Negotiations with WCL in respect of agreements relating to the construction, financing, development and operation of the permanent casino have not been completed.

On May 24, 1994, the Interim Operating Agreement, together with background information on the opening costs of the Interim Operating Agreement and a "Summary of Certain Principal Terms of the Interim Casino Operating Agreement" were made public at a press conference in Windsor, Ontario.

## **NATURE OF THE APPEAL:**

The OCC received a request under the Act for access to the following information:

... all records that would allow me to determine how the province negotiated an operating agreement with Windsor Casino Ltd. for the casino in Windsor and all records that would allow me to determine what the operating agreement includes. The records being sought include a copy of the operating agreement and all related records, including correspondence between parties involved, electronic records or machine readable records, all indexes, abstracts and inter-departmental records identifiable with my request, even though reports on those records may have been sent to other offices or departments and there may be duplication between files.

The requester identified himself as a reporter, indicated that he believed access to the records was in the public interest and that he intended to disseminate the information he received for the public benefit.

The OCC identified a number of responsive records and denied access to them in their entirety under the following exemptions in the Act:

- third party information - section 17(1)
- economic and other interests - sections 18(1)(c), (d) and (e)
- solicitor-client privilege - section 19

The OCC also maintained that certain portions of these documents were not responsive to the request.

The requester appealed the denial of access. He advised the OCC that, as he had now obtained a copy of the Interim Operating Agreement between the OCC and WCL, he was no longer seeking access to this document. He confirmed that he still sought access to all other related records that would allow him to determine how the agreement was negotiated, including those which the OCC had identified as non-responsive.

A Notice of Inquiry was sent to the OCC, the appellant, WCL and another party with an interest in some of the records (the affected party). Representations were received from the appellant, the OCC, WCL and the affected party. All the parties, with the exception of the appellant, were represented by counsel during the inquiry. In addition, the submissions of the OCC include an affidavit from the President of the OCC.

The records at issue and the exemptions claimed for each are set out in Appendix A to this order. The records may be generally described as transaction outlines for the interim casino, drafts of the Pre-Opening and Interim Operating Agreement, various "issues" lists and memoranda, other correspondence and memoranda to the OCC (or its predecessor, the Ontario Casino Project) from its legal counsel, and correspondence between counsel for the OCC and counsel for the WCL.

The OCC has been unable to locate some of the enclosures to the records at issue. The appellant has indicated that he is not pursuing the issue of the reasonableness of the search conducted by the OCC to locate these documents.

In addition to the exemptions claimed by the OCC, WCL claims that section 17(1) should apply to all or portions of Records 13, 14, 15, 21, 24, 39, 41, 43 and 49. As this is a mandatory exemption, I will consider its application to these additional records where appropriate.

## **DISCUSSION:**

### **PRELIMINARY ISSUE**

#### **THE RESPONSIVENESS OF PORTIONS OF RECORDS 3, 7, 22, 23, 47, 51 AND 52**

I canvassed the issue of responsiveness of records in detail in Order P-880. That order dealt with a re-determination regarding this issue which resulted from the decision of the Divisional Court in Ontario (Attorney General) v. Fineberg (1994), 19 O.R. (3d) 197.

In that case, the Divisional Court characterized the issue of the responsiveness of a record to a request as one of relevance. In my discussion of this issue in Order P-880, I stated as follows:

In my view, the need for an institution to determine which documents are relevant to a request is a fundamental first step in responding to the request. It is an integral part of any decision by a head. The request itself sets out the boundaries of relevancy and circumscribes the records which will ultimately be identified as responsive to the request. I am of the view that, in the context of freedom of information legislation, "relevancy" must mean "responsiveness". That is, by asking whether information is "relevant" to a request, one is really asking whether it is "responsive" to a request. While it is admittedly difficult to provide a precise definition of "relevancy" or "responsiveness", I believe that the term describes anything that is **reasonably related to the request** [emphasis added].

I will apply these conclusions to this appeal and will now consider those portions of the records at issue which the OCC considers to be non-responsive.

It is the position of the OCC that certain portions of Records 3, 7, 22, 23, 47, 51 and 52 are not responsive to the request as they relate to the permanent casino. The OCC submits that the request was clearly intended to cover only the documents relating to negotiations for the Interim Operating Agreement. The OCC points to the fact that the appellant amended his request after the Interim Operating Agreement was made public on May 24, 1994 to exclude this document but to still include access to documents that would allow him to determine how "the agreement **was** negotiated" (OCC emphasis) as supporting this interpretation.

The OCC contends further that the only logical interpretation of the request is for records relating to the Interim Operating Agreement as that was the only agreement which had been negotiated at the date of the request and remains the only agreement negotiated to date.

It is the position of the appellant that all records associated with any documents identified as part of his request are responsive because "... they will allow me to determine 'how' an operating agreement was

negotiated". He also points to one of the purposes of the Act as set out in section 1(a)(i), i.e. that the right of access to information should be provided in accordance with the principle that "information should be available to the public" as supporting his position.

The portions of the records which the OCC contends are non-responsive include checklists of documentation for the permanent casino and drafts of the Heads of Agreement for the permanent casino. All of these documents were drafted during the negotiations of the Interim Operating Agreement and the matters described therein discussed by the parties at that time. When the Interim Operating Agreement was announced and its terms made public on May 2, 1994, it was also announced that the OCC and WCL had signed a "Heads of Agreement" with respect to the parties' commitment to negotiate the final agreements for the permanent casino.

The operation of an interim casino facility until such time as the permanent casino complex could be established was one of the requirements to be met by the entity wishing to submit a proposal pursuant to the RFP. As the parties themselves acknowledge, the execution of the Interim Operating Agreement represents one step in the process of negotiating the overall agreements in respect of the permanent casino.

Having reviewed the records and the submissions of the parties, I find that the references to the permanent casino in the enumerated records **are** responsive to the appellant's request. Firstly, I would note that the request is for "information" as opposed to records. That is, the appellant is seeking access to not only documents in which there are references to the Interim Operating Agreement, but also to any information which would assist him in ascertaining how the agreement was negotiated. Merely because he phrases this in the past tense does not mean that the request is limited to any agreements that have been finalized.

Secondly, it is clear from a review of the records that the negotiation of certain issues that ultimately appeared in the final version of the Interim Operating Agreement were linked to and contingent upon the manner in which they were to be addressed in the agreement for the permanent casino. In addition, there are cross references between terms in the Interim Operating Agreement to those in the Heads of Agreement for the permanent casino which was entered into simultaneously with the Interim Operating Agreement.

In my view, the references in the records to the permanent casino would assist the appellant in determining how the Interim Operating Agreement was negotiated. In these circumstances, I find that the decision of the OCC to deny access to the information was not a reasonable exercise of the right to withhold non-responsive information, and I do not uphold it. Therefore, I find that Records 3, 7, 22, 23, 47, 51 and 52 in their entirety are reasonably related to and therefore responsive to the request.

In its submissions, the OCC has indicated that if I determine that these portions of the records are responsive to the request, it relies on the exemptions already claimed in respect of the balance of each record. Accordingly, I will consider these records in their entirety in my discussion of the exemptions claimed.

#### **SOLICITOR-CLIENT PRIVILEGE**

The OCC claims that Records 2, 4, 5, 7, 8, 12, 17, 18, 19, 20, 22, 23, 31, 32, 35, 36, 37, 38, 40, 44, 46, 47, 48, 50, 51 and 52 are exempt under section 19 of the Act.

Section 19 consists of two branches, which provide an institution with the discretion to refuse to disclose:

1. a record that is subject to the common law solicitor-client privilege (Branch 1);  
and
2. a record which was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation (Branch 2).

The OCC claims that all of these records are exempt under Branch 2. It states that all of the records, with the exception of Record 50, were prepared by counsel for use in giving legal advice to their client, the OCC, during the course of its negotiations with WCL. Record 50 was prepared for OCC counsel, for the purpose of giving legal advice to its client on a matter within the expertise of the author of the opinion contained in the record.

I accept these submissions and, on this basis, I find that Records 2, 4, 5, 7, 8, 12, 17, 18, 19, 20, 22, 23, 31, 32, 35, 36, 37, 38, 40, 44, 46, 47, 48, 50, 51 and 52 are exempt under section 19 of the Act.

### **ECONOMIC AND OTHER INTERESTS**

The OCC claims that all the remaining records are exempt under sections 18(1)(c), (d) and (e) of the Act. In my view, Records 14, 15, 21, 27 and 33 are more appropriately analyzed under section 17(1). Accordingly, I will limit my discussion of the application of sections 18(1)(c), (d) and (e) to Records 1, 3, 6, 9, 10, 11, 13, 16, 24, 25, 26, 28, 29, 30, 34, 39, 41, 42, 43, 45 and 49.

I will first consider section 18(1)(c) of the Act which states:

A head may refuse to disclose a record that contains:

information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution.

Section 18(1)(c) provides institutions with a discretionary exemption which can be claimed where disclosure of records could reasonably be expected to prejudice an institution in the competitive marketplace, interfere with its ability to discharge its responsibilities in managing the provincial economy, or adversely affect the government's ability to protect its legitimate economic interests (Order P-441).

All of the records to be considered under this section consist of drafts of agreements prepared during the negotiations between the OCC and WCL prior to the finalization of the Interim Operating Agreement.

The appellant maintains that the OCC's negotiations with WCL for the permanent casino are separate from those conducted with respect to the Interim Operating Agreement and thus section 18 cannot apply. He also states that, given the new government's announcements on a possible referendum

prior to new casinos being developed, it is not entirely clear that any new casinos will be created in the province in the future. He also states that, even if they will be, they will not be established until a number of years from now and thus the timing is too far off for the OCC to claim the application of this exemption.

I do not agree that the negotiations for the interim and permanent casinos are separate. As I indicated in my discussion of responsive records, there are a number of interlinking issues involved in the negotiations of both agreements. Accordingly, I am of the view that the OCC may still claim that its interests in negotiating the agreement for the permanent casino may be harmed. I note however, that, in its submissions, WCL has acknowledged that it has seen all of the records for which section 18 was claimed with the exception of Records 1 and 26.

As far as the appellant's arguments on the likelihood of future casinos in the province are concerned, I believe that this is an issue related to the standard of proof that the OCC must present in order to establish the application of the exemption.

In the case of Ontario (Workers' Compensation Board) v. Ontario (Assistant Information & Privacy Commissioner) (1995), 23 O.R. (3d) 31 at p. 40, the Divisional Court considered the interpretation of the phrase "could reasonably be expected to" as found in section 17(1) of the Act. The same phrase appears in section 18(1)(c). The Court stated that:

There need only be evidence of a reasonable expectation of probable harm which of necessity involves some speculation.

This is the standard I will apply in determining whether the OCC has satisfied the burden of proof under section 53 of the Act that the records fall within section 18(1)(c). I will consider the appellant's submissions on the timing and probability of future casinos in this context.

It is the position of the OCC that, given the context in which these records were created, it is neither practical nor desirable from an economic point of view that the documents be disclosed. The OCC has referred to three categories of casino negotiations which are either ongoing or will be taking place in the future to specifically highlight the negative impact of such disclosure.

As I have previously mentioned, the OCC is presently negotiating an Operating Agreement and a Development Agreement with WCL in respect of the permanent casino.

In addition, on May 1, 1995, a Request for Proposals was issued in respect of a First Nations Casino Project to be developed on Rama First Nation Lands in association with the OCC. As was the case with WCL, the successful proponent will be expected to operate an interim casino until the permanent facility is established. It is anticipated that the successful proponent will be named shortly.

One of the objects of the OCC as set out in section 5 of the OCC Act is to provide for the operation of casinos. Section 7 provides that the OCC shall not operate a casino in a municipality unless council of the municipality has passed a resolution approving the operation of the casino. The OCC indicates that five

municipalities have already passed such resolutions. In addition, approximately 15-20 other municipalities are working with the OCC to study the issues related to developing casinos in their respective communities.

The OCC submits that the revenues to be generated for the province through the operation of casinos and related businesses are not only directly related to the commercial viability of such businesses, but also to the agreements reached by the OCC with the operators of such businesses. That is, the better the deal that is negotiated, the more revenues will be generated for the province. The OCC states that Ontario is a very attractive market for casino operators whom the President of the OCC describes as "highly-sophisticated and skilled negotiators".

The OCC has exempted these records under section 18(1)(c) as it is its view that they disclose a complete picture of the positions and strategies it adopted during the course of the negotiations for the Interim Operating Agreement. The OCC has provided a number of examples of positions it initially took which changed significantly during the negotiation process as evidenced in the various succeeding drafts of the agreements. The OCC states that if other parties with which it will be negotiating in the future are aware of this, it will be forced to justify why it changed its position or be confronted with the other parties' knowledge that those positions changed at all. Conversely, if the OCC's initial position on a given issue did not change in the course of the negotiations which lead to the Interim Operating Agreement, the OCC states that another party's knowledge of this could be expected to limit the leverage it might otherwise be able to apply in future negotiations. Thus parties negotiating with the OCC in the future will be placed in a superior negotiating position to the detriment of the OCC.

The OCC summarizes its position on the application of section 18(1)(c) as follows:

... Given the highly competitive market for gaming activities across North America and the high degree of sophistication of the operators involved, the ability to strike the best deal possible is critical to the Permanent Casino's success... the OCC's ability to negotiate the best deal should not be restricted by information which would reveal its negotiating strategies.

Having carefully reviewed the records and the submissions of the parties, I find that disclosure of Records 1, 3, 6, 9, 10, 11, 13, 16, 24, 25, 26, 28, 29, 30, 34, 39, 41, 42, 43, 45 and 49 could reasonably be expected to result in the OCC being hampered in its ability to negotiate the best deal possible for the province in its continuing negotiations for the permanent casino in Windsor and other casinos which are developed according to its mandate in the OCC Act. Its economic interests would thus be prejudiced and the exemption in section 18(1)(c) applies. Accordingly, I need not consider the application of sections 18(1)(d) and (e).

### **THIRD PARTY INFORMATION**

WCL submits that Records 14, 15, 21, 27 and 33 are exempt from disclosure under section 17(1) of the Act. The OCC supports these submissions with respect to Records 27 and 33.



For a record to qualify for exemption under section 17(1)(a), (b) or (c) the OCC and/or WCL must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; **and**
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in (a), (b) or (c) of section 17(1) will occur.

[Order 36]

### **Records 14, 15 and 21**

Records 14, 15 and 21 consist of correspondence from the solicitors for WCL to the solicitors for the OCC. The letters concern various outstanding issues under discussion between the parties and set out the position of WCL with respect to these matters.

I accept WCL's submissions that these letters contain commercial information supplied in confidence to the OCC during the course of the negotiations for the Interim Operating Agreement.

WCL states that disclosure of this correspondence could reasonably be expected to prejudice significantly the competitive position of WCL and interfere significantly with future negotiations in connection with the Windsor Casino or similar establishments. In addition, WCL claims that it could suffer undue loss should its position with respect to these negotiations be disclosed to parties with whom it will have to deal in the future with respect to these issues.

Having reviewed the records, I am satisfied that all three parts of the section 17(1) test have been satisfied and that disclosure of Records 14, 15 and 21 could reasonably be expected to result in the harms described in section 17(1)(a) and/or (c) of the Act.

### **Records 27 and 33**

These documents are "issues memoranda" prepared by WCL counsel setting out the position of WCL with respect to certain outstanding matters under negotiation between the OCC and WCL. I agree with the position of WCL that they contain commercial information supplied in confidence to the OCC during the course of the negotiations.

WCL makes the same arguments with respect to these records as above; that is, that disclosure could reasonably be expected to significantly affect the competitive position of WCL and significantly interfere with negotiations on its behalf. Based on the information contained in these documents and the submissions of WCL, I find that Records 27 and 33 are exempt pursuant to section 17(1)(a) and/or (c) of the Act.

## PUBLIC INTEREST IN DISCLOSURE

Section 23 of the Act states:

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.

This section does not apply to records exempt under section 19 of the Act. Therefore, my discussion will be restricted to those records I have found to be exempt under sections 17(1) and 18(1)(c), namely Records 1, 3, 6, 9, 10, 11, 13, 14, 15, 16, 21, 24, 25, 26, 27, 28, 29, 30, 33, 34, 39, 41, 42, 43, 45 and 49.

There are two requirements contained in section 23 which must be satisfied in order to invoke the application of the so-called "public interest override": there must be a **compelling** public interest in disclosure; and this compelling public interest must **clearly** outweigh the **purpose** of the exemption.

The OCC submits that, given the amount of the public disclosure about the casino that has taken place, there is no compelling interest in disclosure of the records which clearly outweighs the purpose of the exemptions. It refers to the fact that the Interim Operating Agreement has been made public in its entirety. WCL supports this position and argues that there is a public interest in governments being able to conduct commercial negotiations with private parties and achieve the best deal possible for the province. It suggests that this will not be possible if information such as that at issue in this appeal will be disclosed to the public.

WCL also states that the more effective way to ensure government accountability is for the public to raise any concerns it might have about the casino negotiations through the political level. It suggests that this results in direct political accountability which is more readily apparent than a review of the "paper" involved in the deal.

The appellant has provided extensive submissions on why he believes section 23 is applicable. He maintains that, as the OCC is a new institution under the Act, this appeal is very important in setting a precedent as to the accountability of a facility which is publicly owned but privately managed by WCL. He points to the number of stories about the casino that have been aired by his employer as well as the volume of media coverage generally as being indicative of a public interest in the casino. In addition, he points to the major economic impact the casino has had on the city of Windsor as being a reason why it is important that the public be aware of how the Interim Operating Agreement was negotiated.

He maintains that it is important to be able to analyze the **process** by which the agreement evolved to ascertain if the final result satisfied the goals of the government and how the government balanced the interests of the community, the province and the commercial operators, WCL. He also indicates that if, as has been suggested, the current government will hold a referendum on the future of casinos in this province, the public must know the details of the negotiating process in order to make an informed decision. The appellant also notes that, despite its obligation under section 10(2) of the Act to disclose as much of the record as can reasonably be severed, the OCC has not disclosed any responsive records at all.

In support of his position, the appellant has provided a brief of cases decided under the Australian legislation, the Freedom of Information Act (Victoria) 1992. The appellant argues that these cases are relevant in part because the Act has a common origin with and was partially modelled on the Australian Freedom of Information experience. He also notes that the Victoria legislation contains an almost identical compelling public interest test to that found in section 23.

The cases suggest that there are a number of factors which should be taken into consideration when determining whether the public interest test applies. The factors which should be considered include the general public interest in government information being available, whether the records would disclose reasons for the decision, whether the information in the records is already public and whether the information would contribute to the administration of justice.

In addition, the cases reveal a number of recognized categories of public interest:

- (1) public debate and the public's right to be informed;
- (2) democratic/freedom of speech grounds;
- (3) accountability grounds;
- (4) impropriety/allegations concerning improper conduct.

While I consider these cases to be very useful in considering the application of section 23, in my mind they beg the critical question, that is, regardless of what type of public interest test applies and the categories of public interest, would these particular records satisfy it if they were to be disclosed? In addition, even if they do satisfy the public interest, the wording of section 23 requires me to consider whether this is a **compelling** public interest which **clearly** outweighs the **purpose** of the exemption.

I acknowledge that there are certain issues surrounding the Windsor Casino which arouse the public's curiosity.

However, as I have noted, the records which I have held to be exempt under sections 17(1) and 18(1)(c) consist of correspondence from WCL to OCC, transaction outlines for the interim casino, drafts of the Pre-Opening and Interim Agreement, and various "issues" lists and memoranda. In my opinion, disclosure of these documents would not satisfy the public interest as described by the appellant in terms of the questions he has posed. For example, he queries how the government balanced the interests of the community, the province and WCL. He asks questions about the size of the casino, its operating hours, the formula for dividing up the profits, the balancing of provincial interests against those of WCL. To a large degree, the records do not specifically respond to these questions in that they do not indicate the "why" and "how" behind the queries. That is, they document the progressive give and take of the negotiations as they appear in the drafts, but they do not reveal the thinking of the OCC in deciding on what matters concessions could be made, what matters continued to be of material importance and what issues eventually assumed no import whatsoever as the negotiations progressed. Therefore, I find that there is not a public interest in the disclosure of the records.

However, even if I were to find that such a public interest exists, I am not satisfied that it is compelling so as to outweigh the purpose of the exemptions. I believe that there is also a public interest in, as the OCC

suggests, the OCC maintaining the ability to negotiate the best possible deal for the province in the development of the permanent casino and other future casino projects. I also believe that there is a public interest in WCL being as forthright as possible with the OCC in its negotiations for the Permanent Operating Agreement in terms of the information it provides to the OCC. Any public interest which might exist in the disclosure of the records is not so compelling so as to outweigh the purpose of the section 17(1) and 18(1)(c) exemptions and these interests.

I am sympathetic to the appellant's concern that in this case no records whatsoever have been disclosed to him. I have considered his submissions on the application of section 10(2) of the Act and the principles of the Act as set out in section 1(a), that information should be available to the public and that necessary exemptions from the right of access should be limited and specific.

However, in this case I am of the view that severance of the records would not be reasonable or provide the appellant with any useful information. There are, of course, several clauses in the draft agreements which are contract "boilerplate". In addition, there are several other clauses which eventually appeared in the final version of the Interim Operating Agreement which has already been made public. In my opinion, no useful purpose would be served by severing the records at issue in this appeal and disclosing these portions to the appellant.

**ORDER:**

I uphold the decision of the OCC.

Original signed by: \_\_\_\_\_  
Anita Fineberg  
Inquiry Officer

\_\_\_\_\_  
October 16, 1995

## APPENDIX A

### INDEX OF RECORDS AT ISSUE

RECORD NUMBER	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS CLAIMED
1.	Memorandum from OCC counsel dated December 10, 1993 to Ontario Casino Project enclosing draft transaction outline for interim casino	s. 18(1)(c), (d) and (e)
2.	Memorandum from OCC counsel dated December 15, 1993 (with fax cover sheet) to Ontario Casino Project enclosing draft Pre-opening Agreement for Interim Casino	s. 18(1)(c), (d) and (e) and s. 19
3.	Memorandum from OCC counsel dated December 16, 1993 (with fax cover sheet) to Ontario Casino Project enclosing transaction outline for interim casino and checklist of principal documents relating to the permanent casino [the OCC is taking the position that this document contains, in part, non-responsive items]	s. 18(1)(c), (d) and (e)
I.	Memorandum from OCC counsel dated December 21, 1993 (with fax cover sheet) to Ontario Casino Project enclosing draft of Pre-opening Agreement for Interim Casino	s. 18(1)(c), (d) and (e) and s. 19
5.	Fax transmission from OCC counsel dated December 21, 1993 to Ontario Casino Project attaching Schedule A to the Operating Agreement	s. 18(1)(c), (d) and (e) and s. 19
6.	Memorandum from OCC counsel dated December 23, 1993 to the Ministry of Consumer and various parties enclosing an initial draft of the Pre-opening Agreement for Interim Casino	s. 18(1)(c), (d) and (e)
7.	Fax transmission from OCC counsel dated December 23, 1993 to Ontario Casino Project outlining items for consideration [the OCC is taking the position that this document contains, in part, non-responsive items]	s. 18(1)(c), (d) and (e) and s. 19
8.	Fax transmission from OCC counsel dated January 14, 1994 to Ontario Casino Project providing a copy of Schedule A	s. 18(1)(c), (d) and (e) and s. 19
9.	Letter from OCC counsel dated January 28, 1994 to WCL counsel attaching a draft of Schedule A to the Interim Casino Pre-opening Agreement	s. 18(1)(c), (d) and (e)
10.	Fax transmission from OCC counsel dated February 8, 1994 to the	s. 18(1)(c), (d) and (e)

RECORD NUMBER	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS CLAIMED
	Ministry of Economic Development and Trade providing a copy of a letter to WCL counsel	
11.	Fax transmission from OCC counsel dated February 10, 1994 to Ontario Casino Project attaching a revised excerpt from the Operator Agreement	s. 18(1)(c), (d) and (e)
12.	Memorandum from OCC counsel dated February 16, 1994 to Ontario Casino Project enclosing draft of Interim Casino Operating Agreement	s. 18(1)(c), (d) and (e) and s. 19
13.	Memorandum from OCC counsel dated February 17, 1994 to WCL counsel enclosing draft of Interim Casino Operating Agreement	[s. 17]* s. 18(1)(c), (d) and (e)
14.	Fax transmission from OCC counsel dated March 2, 1994 to Ontario Casino Project attaching correspondence from WCL counsel	[s. 17]* s. 18(1)(c), (d) and (e)
15.	Fax transmission from OCC counsel dated March 2, 1994 to Ministry of Economic Development and Trade attaching correspondence from WCL counsel	[s. 17]* s. 18(1)(c), (d) and (e)
16.	Letter from OCC counsel dated March 3, 1994 to counsel for WCL	s. 18(1)(c), (d) and (e)
17.	Fax transmission from OCC counsel dated March 11, 1994 to Ministry of Consumer and Commercial Relations attaching draft letter to WCL	s. 18(1)(c), (d) and (e) and s. 19
18.	Fax transmission from OCC counsel dated March 11, 1994 to Ministry of Consumer and Commercial Relations with memorandum of meeting with WCL and its counsel	s. 17(1)(a) and (c) s. 18(1)(c), (d) and (e) and s. 19
19.	Memorandum from OCC counsel dated March 15, 1994 to President of OCC	s. 17(1)(a) and (c) s. 18(1)(c), (d) and (e) and s. 19
20.	Fax transmission from OCC counsel dated March 21, 1994 to Ministry of Economic Development and Trade with duplicates of enclosures to Records 18 and 19	s. 17(1)(a) and (c) s. 18(1)(c), (d) and (e) and s. 19
21.	Letter from OCC counsel dated March 25, 1994 (with fax cover sheet) to Ministry of Consumer and Commercial Relations enclosing correspondence received from WCL counsel	[s. 17]* s. 18(1)(c), (d) and (e)

RECORD NUMBER	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS CLAIMED
22.	Fax transmission from OCC counsel dated March 29, 1994 to Ontario Casino Project enclosing summary of principal documentation to be entered into in connection with interim and permanent casino [the OCC is taking the position that this document contains, in part, non-responsive items]	s. 18(1)(c), (d) and (e) and s. 19
23.	Letter from OCC counsel dated March 29, 1994 to Ontario Casino Project and Ministry of Economic Development and Trade with same enclosure as Record 22 [the OCC is taking the position that this document contains, in part, non-responsive items]	s. 18(1)(c), (d) and (e) and s. 19
24.	Letter from OCC counsel dated April 4, 1994 to WCL counsel enclosing draft of Interim Casino Operating Agreement	[s. 17]* s. 18(1)(c), (d) and (e)
25.	Letter from OCC counsel dated April 5, 1994 to WCL counsel [enclosure could not be located]	s. 18(1)(c), (d) and (e)
26.	Letter from OCC counsel dated April 11, 1994 to Ontario Casino Project [enclosure could not be located]	s. 18(1)(c), (d) and (e)
27.	Fax transmission from OCC counsel dated April 13, 1994 to Ontario Casino Project enclosing memorandum re: outstanding issues	s. 17(a) and (c) s. 18(1)(c), (d) and (e)
28.	Letter from OCC counsel dated April 14, 1994 to WCL counsel [enclosure could not be located]	s. 18(1)(c), (d) and (e)
29.	Letter from OCC counsel dated April 15, 1994 to WCL counsel [enclosure could not be located]	s. 18(1)(c), (d) and (e)
30.	Fax transmission from OCC counsel dated April 18, 1994 to Ministry of Consumer and Commercial Relations providing a copy of a letter to WCL counsel	[s. 17]* s. 18(1)(c), (d) and (e)
31.	Fax transmission from OCC counsel dated April 19, 1994 to OCC attaching the executive summary for the Interim Casino Operating Agreement	s. 18(1)(c), (d) and (e) and s. 19
32.	Fax transmission from OCC counsel dated April 19, 1994 to OCC attaching revised executive summary for the Interim Casino Operating Agreement	s. 18(1)(c), (d) and (e) and s. 19
33.	Letter from OCC counsel dated April 20, 1994 to Ministry of Consumer and Commercial Relations (with fax cover sheet) enclosing a revised "issues list" received from WCL counsel	s. 17(1)(a) and (c) s. 18(1)(c), (d) and (e)

RECORD NUMBER	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS CLAIMED
34.	Letter from OCC counsel dated April 22, 1994 to WCL counsel [enclosure could not be located]	s. 18(1)(c), (d) and (e)
35.	Fax transmission from OCC counsel dated April 25, 1994 to OCC	s. 18(1)(c), (d) and (e) and s. 19
36.	Letter from OCC counsel dated April 26, 1994 to OCC enclosing draft letter from WCL counsel	s. 18(1)(c), (d) and (e) and s. 19
37.	Letter from OCC counsel dated April 27, 1994 to OCC	s. 18(1)(c), (d) and (e) and s. 19
38.	Fax transmission from OCC counsel dated May 4, 1994 to OCC regarding outstanding issues	s. 17(1)(a) and (c) s. 18(1)(c), (d) and (e) and s. 19
39.	Letter from OCC counsel dated May 5, 1994 to WCL counsel (with fax cover sheet) enclosing draft of Interim Casino Operating Agreement	[s. 17]* s. 18(1)(c), (d) and (e)
40.	Letter from OCC counsel dated May 5, 1994 to Ministry of Economic Development and Trade enclosing copy of a draft opinion	s. 18(1)(c), (d) and (e) and s. 19
41.	Fax transmission from OCC counsel dated May 5, 1994 attaching letter to WCL counsel and draft of Interim Casino Operating Agreement	[s. 17]* s. 18(1)(c), (d) and (e)
42.	Letter from OCC counsel dated May 8, 1994 to WCL counsel (with fax cover sheet) enclosing draft opinion	s. 18(1)(c), (d) and (e)
43.	Letter from OCC counsel to dated May 8, 1994 to WCL counsel (with fax cover sheet) enclosing draft of Interim Casino Operating Agreement	[s. 17]* s. 18(1)(c), (d) and (e)
44.	Fax transmission from OCC counsel dated May 9, 1994 to Ministry of Economic Development and Trade attaching memorandum from WCL counsel	s. 18(1)(c), (d) and (e) and s. 19
45.	Fax transmission from OCC counsel dated May 9, 1994 to Ministry of Economic Development and Trade attaching copy of letter to WCL counsel	s. 18(1)(c), (d) and (e)
46.	Fax transmission from OCC counsel dated May 9, 1994 to Ontario Casino Corporation attaching summary prepared by WCL counsel	s. 18(1)(c), (d) and (e) and s. 19
47.	Fax transmission from OCC counsel dated May 10, 1994 to OCC	s. 18(1)(c), (d) and (e)



RECORD NUMBER	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS CLAIMED
	attaching executive summary for the draft of Interim Casino Operating Agreement and Heads of Agreement for the Permanent Casino [the OCC is taking the position that this document contains, in part, non-responsive items]	and s. 19
48.	Memorandum prepared by OCC counsel dated May 12, 1994	s. 18(1)(c), (d) and (e) and s. 19
49.	Letter from OCC counsel dated May 13, 1994 to WCL counsel enclosing draft of Interim Casino Operating Agreement	[s. 17]* s. 18(1)(c), (d) and (e)
50.	Fax transmission from OCC counsel dated May 16, 1994 to OCC enclosing copy of letter received from counsel	s. 18(1)(c), (d) and (e) and s. 19
51.	Letter from OCC counsel dated May 18, 1994 to OCC enclosing summary of the principal terms of Interim Casino Operating Agreement and Heads of Agreement for the Permanent Casino [the OCC is taking the position that this document contains, in part, a non-responsive record]	s. 18(1)(c), (d) and (e) and s. 19
52.	Fax transmission from OCC counsel dated May 19, 1994 to OCC attaching summary of principal terms of Interim Casino Operating Agreement and Heads of Agreement for the Permanent Casino [the OCC is taking the position that this document contains, in part, a non-responsive record]	s. 18(1)(c), (d) and (e) and 19

\* Section 17 of the Act has been raised by WCL