



Information and Privacy  
Commissioner/Ontario

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

## ORDER P-1443

Appeal P\_9600420  
[Reconsideration]

Ministry of the Solicitor General and Correctional Services



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## **BACKGROUND:**

On August 6, 1997, I issued Order P-1438 which addressed the decision by the Ministry of the Solicitor General and Correctional Services (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act) to deny access to records requested by the appellant, claiming that they fell within the parameters of section 65(6) of the Act, and therefore, outside the scope of the Act. The requested records consist of occurrence reports, misconduct reports, duty rolls, memos, correspondence, log books, statements, interview notes, investigation reports and policy documents from the Ministry and the Toronto Jail.

In Order P-1438, I found that all three requirements of section 65(6)1 had been met and the records were, therefore, excluded from the scope of the Act.

During the course of the appeal, the appellant's counsel raised the following constitutional question:

... that section 65(6) of the Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.F.31, as amended (the "Act"), as applied to the request for information by the Appellant, denies the Applicant equality before the law, contrary to section 15 of the Canadian Charter of Rights and Freedoms (the "Charter"). By limiting the Appellant's access to the documents in the possession and custody of the employer which are the only means of proof of violation of section 15 of the Charter by the employer, section 65(6) of the Act as applied to the Appellant reinforces the denial of equality which the appellant has suffered at the hands of the employer.

The appellant's counsel provided extensive representations on this issue. The Ministry argued that I did not have the jurisdiction to deal with a Charter issue relating to the Act on the basis of recent case law (Bell v. Canadian Human Rights Commission [1996] 3 S.C.R. 854).

I concluded that it was not necessary for me to consider the Ministry's arguments because, in my view, the appellant had not made out his Charter case in any event.

## **THE RECONSIDERATION REQUEST:**

The appellant (on his own behalf) has requested that I reconsider my decision in Order P-1438 on the grounds that there is a fundamental defect in the adjudication process or some other jurisdictional defect in the order.

In this regard, the appellant submits that I improperly declined jurisdiction under the Act to rule on the Ministry's arguments on the Commission's jurisdiction to decide Charter questions, and the appellant's reply to these arguments.

The appellant also submits that I improperly exercised my discretion not to fully consider and rule on the appellant's Charter arguments. The appellant does not expand on this submission,

but rather reiterates and adds new argument to the submissions originally presented in respect of his section 15 Charter claim.

## **DECISION:**

The IPC's Reconsideration Policy Statement describes the threshold for proceeding with a reconsideration, as follows:

When an application for reconsideration of an order is received, the order should be reconsidered only where:

1. there is a fundamental defect in the adjudication process (for example, lack of procedural fairness) or some other jurisdictional defect in the order; or
2. there is a typographical or other clerical error in the order which has a bearing on the decision or where the order does not express the manifest intention of the decision maker.

An order should not be reconsidered simply on the basis that new evidence is provided, whether or not that evidence was obtainable at the time of the inquiry.

With respect to the appellant's second argument, that I improperly exercised my discretion not to fully consider the appellant's section 15(1) claim, I have taken into account the scope of the reconsideration policy and the appellant's submissions. In my view, the appellant has provided no evidence that I have failed to consider or have misconstrued the evidence submitted by his counsel in the first instance. I conclude that the ground which the appellant is advancing to support his reconsideration request in this regard is the provision of new evidence. In my view, this does not fall within the parameters of the reconsideration policy.

In general, I feel it is important to protect the integrity of the Office of the Information and Privacy Commissioner's processes, and to ensure that the parties to an appeal are able, in most cases, to safely rely on an order to finally settle the issues in dispute. It is for that reason that the policy on reconsideration does **not** permit an order to be reconsidered on the basis that new evidence (or submissions) is provided, whether or not that evidence (or submissions) was obtainable at the time of the inquiry.

I note that the appellant has had ample opportunity during the inquiry to make representations on this matter. In the circumstances of this appeal, the parties were provided with the very unusual opportunity to exchange their representations on the Charter issues raised by each of them. I fully considered all of the representations submitted on this issue in arriving at my conclusions.

Therefore, based on the foregoing, the appellant's request for reconsideration on this ground is denied.

With respect to the appellant's first argument, that I improperly declined jurisdiction to rule on the Ministry's arguments regarding my jurisdiction to decide Charter questions, I am not

persuaded by the appellant that in deciding that it was not necessary to determine this issue, I declined jurisdiction to rule on this matter.

The reason given in Order P-1438 was that the appellant's Charter argument had no merit and therefore, there was no Charter "issue" to decide. Accordingly, it was not necessary to address the Ministry's arguments.

Consequently, I find that there was no jurisdictional defect in Order P-1438 and the appellant's request for reconsideration is denied.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ August 19, 1997