



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

ORDER MO-1782

Appeal MA-020122-2

Regional Municipality of Niagara



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BACKGROUND

In 1998, the appellant's construction company sought tenders in respect of two public works projects to be undertaken by the Regional Municipality of Niagara (Niagara). The appellant's company was not awarded either contract. The appellant launched a civil action against Niagara that same year with respect to the first tender. In 2002, the appellant amended the action to include claims arising from the second lost tender. The litigation concluded in November 2002 to the benefit of Niagara.

NATURE OF THIS APPEAL

Since 1998, the appellant has made numerous requests to Niagara under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The request at issue in this appeal is for:

. . . [A]ll e-mail, notes, messages, diary entries, journals, scratch pad notes, telephone call message or similar messages left, handwritten notes, memo, etc;

- of the current Director of Public Works, [a named individual], and
- of the former Director of Public Works, [a named individual]

that deal with, or refer in any way to [my company], the low bids on [two specified tenders]. This request covers those records created by or for them, sent by or for them, and/or received by [or] for them from anyone. We are not seeking documents created by [us] or received by [us], nor any technical material addressing the design or specifications for the project.

For e-mail, I request that the e-mail server be checked for, deleted items, archived items, sent items and received items. The period in question is April 1998 to date.

I understand that [the former Director of Public Works] left Niagara in mid 1998, therefore I would ask that [the current Director of Public Works] review the files left to him by [the former Director], including those on computer hard disks.

Internal Niagara sources for e-mail sent to the Director(s) would be [three named individuals] amongst possibly several others at Niagara. I would ask that the e-mail accounts of these Niagara individuals be checked for deleted, archived, sent and received items. If any of these individuals have assistants who manage e-mail, please check the [assistants'] e-mails as well.

Because it did not issue a decision to the appellant within the requisite 30 days, on appeal, this office ordered Niagara to do so (Order MO-1541). Niagara subsequently issued a decision refusing to process the appellant's request on the basis that it was frivolous or vexatious under section 4(1)(b) of the *Act*.

The issue for me to decide is whether the appellant's request is frivolous or vexatious under section 4(1)(b).

The evidence before me is contained in the representations of both Niagara and the appellant.

DISCUSSION

IS THE REQUEST FRIVOLOUS OR VEXATIOUS?

General principles

Section 4(1)(b) provides institutions with a summary mechanism to deal with frivolous or vexatious requests. The relevant portion of that section reads:

Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless,

.
the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious.

Section 5.1 of Regulation 823 under the *Act* elaborates on the meaning of the terms “frivolous” and “vexatious”:

A head of an institution that receives a request for access to a record or personal information shall conclude that the request is frivolous or vexatious if,

- (a) the head is of the opinion on reasonable grounds that the request is part of a pattern of conduct that amounts to an abuse of the right of access or would interfere with the operations of the institution; or
- (b) the head is of the opinion on reasonable grounds that the request is made in bad faith or for a purpose other than to obtain access.

Niagara takes the position that the request is frivolous or vexatious because, under section 5.1(a),

- it is part of a pattern of conduct that amounts to an abuse of the right of access, or
- it would interfere with Niagara’s operations.

I consider first whether there is sufficient evidence before me to conclude that the appellant has engaged in a pattern of conduct that amounts to an abuse of the right of access.

Is the request part of a pattern of conduct that amounts to an abuse of the right of access?

Introduction

This office has explored the meaning of “a pattern of conduct that amounts to an abuse of the right of access” in numerous orders. Generally, the approach has been to define the various elements of the concept. From those earlier orders, we can identify some basic requirements.

First, many orders consider certain factors as relevant in deciding whether a pattern of conduct amounts to an abuse of the right of access (see for example Order M-864). These factors include:

- *Number of requests*

Is the number excessive by reasonable standards?

- *Nature and scope of the requests*

Are they excessively broad and varied in scope or unusually detailed? Are they identical to or similar to previous requests?

- *Timing of the requests*

Is the timing of the requests connected to court proceedings or the occurrence of some other related event?

- *Purpose of the requests*

Are the requests intended to accomplish some objective other than to gain access? For example, are they made for “nuisance” value, or is the requester’s aim to harass government or to break or burden the system?

It has also been recognized that other factors, particular to the case under consideration, can also be relevant in deciding whether a pattern of conduct amounts to an abuse of the right of access. I find that a consideration of these listed factors is appropriate in this appeal. I also find that another factor, which I call “the conduct of Niagara”, is relevant to my decision.

Past orders offer other direction as well. It is clear from past orders that, in examining whether a pattern of conduct exists, the focus should be on the cumulative nature and effect of a requester’s behaviour. It is also clear that in many cases, ascertaining the purpose of requesters requires the drawing of inferences from their behaviour because it is seldom the case that requesters admit to a purpose other than access.

Below, then, I consider whether the facts relevant to this case support a conclusion that the appellant has engaged in a pattern of conduct that amounts to an abuse of the right of access.

Number of requests

Between 1998 and the date Niagara sent me its representations in this appeal, the appellant had filed a total of 28 requests: 3 in 1998, 1 in 1999, 2 in 2000, 7 in 2001, 11 in 2002 and 4 in the first three months of 2003.

The request at issue here deals with the subject of tenders for two specific municipal projects for which the appellant was an unsuccessful bidder.

The appellant has filed three other requests that, in my view, are repetitive of this request in that they deal specifically with the subject matter of these tenders. One was filed in 1998 and two in 2002.

The appellant has filed an additional five requests that are not necessarily repetitive of the tender requests but do overlap or are related to those requests, two in 1998, two in 2001 and one in 2002.

The appellant's requests have been increasing since 1999. Of the total number of access to information requests that Niagara has received, the appellant's requests account for approximately half each year.

In the circumstances, the number of requests is sufficiently high to be considered a factor weighing in favour of a finding that a pattern of conduct exists that amounts to an abuse of the right of access.

Nature and scope of the requests

General

The appellant submits that his requests are "very clearly about my relationship with [Niagara]":

Most if not all of the requests are specific to the specific events noted in my general comments. Through four years of trying to access records I have yet to figure out through review of the very few records I have obtained so far, of how Niagara manages its tender processes on significant Open Public Tenders. All of my requests are focused on records dealing with this subject and are not outside the scope of my interest, they are further, very specific or capable of being reduced to being more specific if only [Niagara] would cooperate with narrowing requests with feedback on what records may exist. [Niagara] is further abusing the process by making me fish randomly for records that I am forced to imagine

in the abstract could exist, and for the most part only gain access to very few records and only after many months and years of time.

The appellant's previous requests in detail

In fact, a thorough examination of the appellant's requests themselves is more telling of the nature and scope of those same requests. Some of these requests are reproduced below and are identified using Niagara's file numbering system:

2002.02

In purchases and/or expenditures made by the [Niagara] under the authorization, direction and/or recommendation of [the named person]. That did not follow from an advertised open public tender competition process, with a formal tender opening. And that are over \$5,000 in size.

The purchase order or requisition to the vendor

The quotations of offers submitted by each vendor proponent (both successful and unsuccessful) in each instance.

Documents authored by [the named person] commenting on the purchase after the offers were received and prior to the purchase order or requisition being issued to the vendor.

We are interested for the time being in the records for the years 2001, 2000, 1999, 1998 and 1997. Please estimate and quote each year separately to facilitate narrowing the request if necessary.

[This request resulted in a fee estimate for processing the request of over \$7,000]

2002.03

All records which identify any special exclusivity arrangements between Niagara and a company known as [the named company] for the procurement of product distributed by [the company].

This would include all correspondence between Niagara and its various consultants for construction and engineering projects where these products are used or exclusively specified.

All records of evaluations performed on the alternative products available for the products specified exclusively to be provided from [the named company].

Since [the named company] is merely a reseller of products manufactured by others, it may be that the product names are used without identifying the fact that [the named company] is the exclusive distributor.

This would impact on the responsive records, in that we want the same records on the products exclusively distributed by [the named company] also in the request, though the name ... is not used.

Records that should be considered included are also submission by alternative suppliers addressing their inability to supply Niagara project due to the Proprietary Specifications used in tenders.

[This request resulted in a fee estimate for processing the request of \$11,010.]

2002.07

Referring to the attached Schedule "A" listing various documents produced by Niagara in litigation with [the appellant]. I request all documents that identify the following:

When each document was identified and forwarded to [a named individual] or his department at Niagara

When each document was identified and forwarded to Blake, Cassels and Graydon LLP.

Copies of all documents that were identified or forwarded and that are not listed on the attached schedule. Please include in the request, copies of all memo or transmittal, emails, courier receipts, etc. that accompanied the forwarding of documents both identified in the schedule and those that are not on the list.

2002.08

For the years 2001, 2000, 1999, 1998 and 1997

Copies of all purchase Orders issued to the vendor and any related or associate corporations, companies or entities, in each of the years.

Printout from the Region's accounting records of each year-end detailed vendor report for the vendor and any related or associate corporations or entities in each of the years.

Please breakdown the response to the request on a year-by-year basis.

In the event that the vendor's identification is not clear within Niagara records, please contact [a named individual], who is very familiar with the entity in question and any related or associated entities, and can provide direction in fulfilling the request.

This latter request led to a revised request that was the subject of Order MO-1724. Initially, Niagara responded to this request by stating that it was frivolous and vexatious. That decision was not upheld on appeal to this office in Order MO-1575, which required Niagara to provide the appellant with a decision in accordance with the *Act*. Niagara then issued a decision with an interim fee estimate of \$18,511. The appellant responded to Niagara by letter stating:

- 1) Please advise if copies of Purchase Orders are archived or recorded in digital form. Please provide details on how this is done. Please advise how are Purchase Orders generally distributed and maintained for the years in question? ie., Number of copies? Which departments or offices maintain copies, for how long? etc. Please provide as much information as reasonably possible to assist in narrowing my request.
- 2) Please also ask the following question of the identified individuals to assist in narrowing my request: "To each of [three identified individuals] – Please identify the names used by Niagara vendors that are related or associated with [the identified vendor] to the best of your knowledge. Please provide each of their answers. [The appellant then stipulated how these questions should be asked].
- 3) Please also ask the Accounting Department if they are able to identify [the identified vendor] and any other vendors that are related or associated with [the identified vendor] and to identify these vendors from their accounting vendor list.
- 4) Please break-out the portion of fee for bullet point two (i.e.: the "print-outs).

As a result, the appellant received a revised decision letter. He then revised his request to be:

- 1) To obtain from each of [three identified individuals] the names of Niagara vendors, related to or affiliated with [the identified vendor]. This information is to be limited to these individual's personal knowledge or from their own records at hand. I do not require that they perform any exhaustive search to determine this information.
- 2) To provide in digital file form from the accounting records the detailed vendor reports for each of the identified vendors, including [the identified vendor], for the years 1997, 1998, 1999, 2000 and 2001.
- 3) To provide in a digital file form the Region's year end Vendor Summary for each of the years 1997, 1998, 1999, 2000 and 2001. This should show, the vendor ID, vendor name, and total for each year.

The adjudicator's decision in Order MO-1724 was unsympathetic to both parties:

Having said that, I also recognize that the appellant's revised request is in some ways a restatement of portions of his earlier requests. [Niagara] has already given the appellant an access decision concerning some of the requested information, or

has advised the appellant of its preliminary position on access to those records through the parties' ongoing communications.

Notwithstanding the fact that the appellant may be aware of [Niagara's] position concerning access to some of the requested records, or whether or not responsive records exist, I will order [Niagara] to issue a proper decision letter in response to the appellant's revised request. *Given the nature of and background to this appeal, in my view it is important that both parties adhere to the requirements of the legislation concerning access requests and decisions.* Accordingly, I will order [Niagara] to issue a proper decision letter to the appellant, in accordance with sections 19 and 22 of the *Act*. The decision should respond to the appellant's request for information contained in any records which may be held by the three identified individuals, as well as the request for records in digital file format. [Emphasis added]

The current request

Above, I reproduced the current request. In fact, the appellant revised this request during the course of the processing of this appeal also. At the mediation stage, the appellant indicated that the following would satisfy the search in this request:

By asking each of [three named individuals] and each of their assistants if any, for copies of any e-mail, notes, messages, memo, or other communications they sent or received from or to [two named individuals] at any time concerning [any matters relating to the appellant]. To ask them also if they are aware of anyone other [than] themselves having had such communication, and to identify whom (sic).

By asking each of [two named individuals] and each of their assistants if any, if at any time they received or sent, e-mail, notes, messages, memo or other communications from or to anyone concerning [any matters relating to the appellant] and to provide copies of same.

Niagara responded to this with a revised decision reiterating that they were denying the request because it continued to be frivolous or vexatious.

Findings

Contrary to the appellant's claim, I find that his requests are not specific. The nature and scope of his requests are more often than not extremely broad. In many cases, the requests encompass a very large number of records. Added to the very broad scope of the requests, is the detail with which the appellant peppers each subsection of each request. The appellant rarely requests only one type of record. He seeks every kind of record for multiple years from various sources or individuals and their assistants. One need only note the enormity of the applicable fees for

processing the requests in several of these cases to understand that many of the requests are very comprehensive. Even where this office, on appeal, has reduced them, the applicable fees have remained substantial in some cases.

In addition, as I indicated above under “number of requests”, many of the requests are closely related and, if not identical, are similar in nature and overlap to a significant degree.

Therefore, I find that the nature and scope of the requests is such that they support a finding that a pattern of conduct exists that amounts to an abuse of the right of access.

Timing of the requests

The requests are generally coincident with the appellant’s commencement of legal proceedings against Niagara. This fact considered in isolation is insignificant. When it is combined with other factors evident in this case, however, it contributes to the discussion about this appellant’s conduct, and weighs in favour of a frivolous or vexatious finding.

Purpose of the requests

Again, the appellant’s *stated* purpose is as follows:

Most if not all of the requests are specific to the specific events noted in my general comments. Through four years of trying to accessing records I have yet to figure out through review of the very few records I have obtain so far, of how Niagara manages its tender processes on significant Open Public Tenders. All of my requests are focused on records dealing with this subject and are not outside the scope of my interest, they are further, very specific or capable of being reduced to being more specific if only the Institution would cooperate with narrowing request with feedback on what records may exist.

Past orders of this office have recognised, however, that the *conduct* of requesters often gives a much more accurate picture of their purpose than do their words. Consequently, as is suggested by Order M-864, adjudicators have relied on evidence of the requester’s use of the freedom of information process to accomplish objectives *unrelated* to access in order to conclude that they have abused the right of access. (See Orders M-947 and MO-1519.)

For example, in Order M-947 the adjudicator notes that the appellant in that case

became focused on seeking information related to how the City dealt with his requests and the amount of time and money the City had spent dealing with him. Because the appellant did not feel he was receiving the service from the City’s Freedom of Information branch to which he felt he was entitled, he began using the *Act* and the Freedom of Information process as a means to express his personal attacks on the personnel involved in the process. To this end, his

requests became a springboard for launching attacks on City council members and the City's legal department.

In Order MO-1519, the adjudicator concluded that the appellant in that appeal intended to use the process to further his dispute with the institution rather than simply access information. In so concluding, she highlighted several troubling aspects of the appellant's conduct:

- the appellant had not made efforts to work constructively with the City to resolve his requests
- there was evidence of an escalation of the appellant's uncooperative and harassing manner
- the appellant's behaviour was not explained away by his stated confusion or inexperience with the *Act* because he had a history of experience with this office and the *Act*

The conduct of this appellant also suggests that his purpose is to accomplish some objective additional to and distinct from the purpose of obtaining access.

As was the case in Order M-947, this appellant's claims about his purpose are not sincere. The appellant does not, as he often argues, limit his requests to the open public tender process. His requests include access to correspondence about him, his former counsel, and how much money Niagara has spent on legal advice respecting matters concerning him. For example, in MO-1548, an order deciding three appeals, he sought access to information relating to complaints made by Niagara to the Law Society of Upper Canada about a named individual, all records related to a construction schedule pertaining to a contract awarded by Niagara to a named company, and all records of payments to a named law firm and any other law firm in connection with a specific civil action.

The appellant's overall approach to the access to information process belies his position that his only purpose is to seek access to records. At the end of the process of negotiation and mediation in this appeal, for example, the appellant settles on a request that is *broader* than his original. A similar approach is evident in other of his requests. In Order MO-1465, we see that the appellant changed the request numerous times within the same proceeding. The adjudicator informs us that, in general, the request was for all information about all legal expenditures for litigation with the appellant. The adjudicator details that the appellant began with a four-part request, which he then reduced to a two-part request. During mediation he restated his request into two parts. He later revised his request again into two parts. Then, he finally added another part for all invoices from the law firm relating to the appellant for the past three years. I find that this conduct suggests an unwillingness to participate in the process in a constructive manner, a tendency to hinder rather than facilitate the access process, and a careless disregard for the processes of the *Act* and this office.

An examination of the substance of the appellant's requests also suggests a purpose other than simply to gain access to information. A troublesome feature of many of this appellant's requests

is that he is as concerned with the method by which he wants Niagara to obtain the information as he is with the specifics of the information he seeks. In this regard, in addition to the current request, I refer to Niagara's file 2002.08 listed above under the heading "the appellant's previous requests in detail".

Moreover, in the process of directing Niagara's searches, he appears to personalise the request to an unreasonable degree. He insists that certain persons be questioned. He sets out in detail the kinds of questions to be asked. He appears to want to personally burden certain representatives of Niagara with the tasks he identifies. This type of conduct compels scrutiny.

First, it is difficult to imagine how the appellant could facilitate access to the information by framing his request in such a manner. While an institution is not obligated to provide specific answers to questions posed by a requester, it is expected to search for any existing records that might respond to those questions. The consequence for Niagara staff of the appellant's complicated question format is the additional work of puzzling through his questions to determine whether records exist that would contain the information being sought. These searches have proven to be a daunting task.

Second, such a request does not *appear* to have access as its only purpose. It appears to also seek the direction and manipulation of certain employees of a municipal institution. In some circumstances, it may be reasonable and even helpful to the institution for a requester to identify specific employees. However, in my view, the appellant's actions in this regard go far beyond being helpful and reasonable, to the point of attempting to impose his will on and direct the work of specific civil servants, all under the cloak of access to information. After all, this appellant is not an unsophisticated user of the access to information process. The appellant has had enough experience with Niagara, this office and the *Act* in general to know that while he might be entitled to records, he is not, in fact, entitled to require specific employees to answer his questions. In my view, his persistence in this approach indicates, again, a careless disregard for the access process and also an intention to pester or burden the employees of Niagara.

The appellant's own words, uttered outside the process of adjudication, also reveal another purpose in making his requests.

In correspondence on this file, the appellant's comments belie his other stated intentions.

If Niagara believes that by delaying disclosure of records till after a trial it can escape consequences, it is mistaken. The law does not permit such trickery. Such tactics would only serve to complicate matters for Niagara following litigation and *raise dire consequences for responsible individuals*. (emphasis added)
(Letter dated April 5, 2002 to Niagara)

In Order MO-1548, the adjudicator refers to Niagara's submissions that quote from the correspondence of the appellant. There, Niagara construed the appellant's language as threatening personal liability against its Freedom of Information Coordinator. Niagara refers to

correspondence from the appellant in which he alleges bad faith and misconduct on the part of Niagara and states that *“our relationship with you will likely continue for an indefinite number of years, let’s make the best we can of it.”*

In Order MO-1575, which decided five of the appellant’s appeals, the appellant’s correspondence with Niagara is again highlighted. Niagara argues that “[the appellant] has used the [Act’s] process to threaten the Region and to impugn the conduct of many of its employees.” In this regard Niagara relies on a letter dated June 17, 2002 from the appellant in which he states, in part, that:

[The Act] exists principally to allow the public to be informed on how institutions operate and to help bring about position changes. Only people with an interest, (like myself) to disclose improprieties, take the time and make the effort to bring matters to the public’s attention. This is a purpose and proper use of the [Act].

...

I have an interest in making bad apples of Niagara personally accountable, when it is right and proper to do so. This is not only in the public interest, it will also be personally gratifying for me, after all I have gone through, to make a difference.
[emphasis added]

Here, as in Order MO-1548, the adjudicator notes that the appellant’s language is “often intemperate” but ultimately finds that there is insufficient evidence, at that point, to warrant either a frivolous or vexatious or a bad faith finding.

In my view, these comments by the appellant indicate that he is pursuing a personal agenda apart from access. He has never clearly outlined, neither to Niagara nor to this office, how his requests are in the public interest. His language is not only intemperate; it is also often inappropriate and sometimes verges on threatening. I cannot help but conclude that the appellant’s own words and the tone of his correspondence signal a desire to carry on a conflict with Niagara, in addition to seeking information.

Therefore, while I cannot conclude that this appellant does not want access to information, I do find that he has more than one purpose in making the requests. He has a secondary, yet still significant, purpose, which appears to be the pursuit of a dispute with or simply to be a nuisance to Niagara. As a result, I find that this factor weighs in favour of a finding that a pattern of conduct exists that amounts to an abuse of the right of access.

Conduct of Niagara

The appellant asserts that Niagara

has been engaged in a systematic abuse of process of the Act to delay, deter and prevent access to records under my requests for information. These improper

actions under the Act, coincide with the timing of the trial and the refusal of similar requests for similar records under the rules of Civil Procedures. I have made many submission to the Information and Privacy Commission on the systemic abuse of process I have been subjected to at various times.

...

Most if not all of the requests I have made over the last four years have been subjected to the obstacle of refusal on the "Frivolous and Vexatious" argument. In each instance it was determined not to apply.

I submit that the Institution is abusing "Frivolous and Vexatious" as a refusal which should be very clear. Further it is respectfully submitted that the continued use of this provision by the institution is designed to some day create a pattern of conduct simply by sheer chance and volume.

I will in no way defend the actions and responses of Niagara to this appellant. This office has already examined the conduct of which the appellant complains in two orders mentioned herein, Orders MO-1548 and MO-1575, and found it wanting. While Niagara responded to the first five of the appellant's requests, it appears that it quickly lost patience and relied on section 4 to deal with many of the appellant's subsequent requests.

In certain circumstances, the conduct of an institution may be so inappropriate as to outweigh any factors in favour of a frivolous or vexatious finding. However, in this case, while not exemplary, there is nothing in the overall conduct of Niagara that would justify the appellant's behaviour or negate a finding that a pattern of conduct exists that amounts to an abuse of the right of access.

Conclusion

There are reasonable and sufficient grounds for making a finding that the appellant's request is frivolous or vexatious under section 4(1)(b). This appellant's dealings with Niagara began in 1998. Since that time, his conduct in making access requests has been called into question by Niagara on other occasions. While this office did not make a finding that his requests were frivolous or vexatious before, the evidence now has accumulated to the point where such a finding can be made. This finding is based on a consideration of numerous factors including the total number of the appellant's requests, their timing, their repetitive and overlapping nature, their scope, which is both extremely broad and inordinately detailed at the same time, and the appellant's purpose in making his requests, both admitted and inferred. In addition, I find nothing in Niagara's conduct that would negate a conclusion that the appellant's request is frivolous or vexatious.

In light of this conclusion, it is not necessary for me to consider whether the appellant's request would unreasonably interfere with Niagara's operations.

Remedy

Given that the appellant has engaged in a pattern of conduct that amounts to an abuse of the right of access, I must decide on an appropriate remedy.

In the circumstances, I have decided the appropriate remedy is to uphold Niagara's decision that the appellant does not have a right of access to the information he requested in this appeal.

In addition, in order to deal with the broader issues of the appellant's conduct, I have decided to limit the number of his active access to information matters with Niagara to one at any given time. The decision to limit the appellant's active matters to one at a time does not preclude a finding, where appropriate, that any current or future request is frivolous or vexatious. The appellant may apply to this office for an order varying the terms of this order after one year has passed from the date of this order.

ORDER:

1. I uphold Niagara's decision under section 4(1)(b) of the *Act* that the appellant does not have a right of access to the records he requested because the request is frivolous or vexatious, and I dismiss this appeal.
2. I impose the following conditions on the processing of any requests and appeals from the appellant with respect to Niagara now and for a specified time in the future:
 - (a) For a period of one year following the date of this order, I am imposing a one-transaction limit on the number of requests and/or appeals under the *Act* that may proceed at any given point in time, including any requests or appeals that are outstanding as of the date of this order.
 - (b) Subject to the one-transaction limit described in provision 2(a) above, if the appellant wishes any of his requests and/or appeals that exist at any given time to proceed to completion, the appellant shall notify both this office and Niagara and advise as to which matter he wishes to proceed.
 - (c) If the appellant fails to pursue any of his appeals that are with this office on the date of this order within two years of the date of this order, this office may declare those appeals to have been abandoned.
3. The terms of this order shall apply to any requests and appeals made by the appellant or by any individual, organization or entity found to be acting on his behalf or under his direction.

4. At the conclusion of one year from the date of this order, the appellant, Niagara and/or any person or organization affected by this order, may apply to this office to seek to vary the terms of provision 2 of this order, failing which its terms shall continue in effect until such time as a variance is sought and ordered.
5. This office remains seized of this matter for whatever period is necessary to ensure implementation of, and compliance with, the terms of this order.

Original Signed by: _____
Rosemary Muzzi
Adjudicator

_____ April 23, 2004