

NOVA SCOTIA COURT OF APPEAL

Citation: *Shannex Health Care Management Inc. v. Nova Scotia (Attorney General)*, 2005 NSCA 158

Date: Decision Date 20051208

Docket: 228257

Registry: Halifax

Between:

Shannex Health Care Management Inc.

Applicant/Appellant

v.

Attorney General of Nova Scotia representing
the Nova Scotia Department of Health

Respondent

Judge: The Honourable Justice Nancy Bateman

Application Heard: November 18, 2005

Subject: **Freedom of Information and Protection of Privacy Act**, S.N.S. 1993, c. 5 (“**FOIPOP Act**”)/Order for Confidentiality

Summary: **FOIPOP** Review Officer ordered release of certain Department of Health approved budget summaries relating to Shannex’s operation of nursing homes in the Province. Shannex appealed to the Supreme Court, tendering affidavit evidence demonstrating that from the budget summaries information about the nursing home’s actual operations could be gleaned. The Supreme Court judge dismissed the appeal, finding that Shannex had not demonstrated that the release of the records would “harm significantly” its competitive position (**FOIPOP Act**, s. 21(1)(c)). A Supreme Court judge had ordered the affidavit evidence sealed. Appeal from Supreme Court dismissed.

After appeal hearing Shannex applied to the Court of Appeal to seal both the affidavit evidence and the records in dispute.

Issues: Should the affidavits and/or records in dispute be sealed?

Result: The order sought by Shannex conflicts with the open court principle. While the Court has a discretion to grant a sealing order, that discretion must be exercised through the application of the *Dagenais/Mentuck* test (**Sierra Club of Canada v. Canada (Minister of Finance)**, [2002] 2 S.C.R. 522, 2002 SCC 41).

Shannex met the burden of demonstrating that the order sought, which was in the interests of protecting the fair trial process, outweighed the negative effect the order would have on the principle of open justice.

Partial confidentiality order granted in relation to the affidavit evidence as well as a full sealing order in relation to the record in dispute.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 13 pages.