

Federal Court
of Appeal



CANADA

Cour d'appel
fédérale

Date: 20090529

Dockets: A-413-08

A-379-08

Citation: 2009 FCA 181

**CORAM: RICHARD C.J.
SEXTON J.A.
SHARLOW J.A.**

A-413-08

BETWEEN:

THE COMMISSIONER OF THE ROYAL CANADIAN MOUNTED POLICE

Appellant

and

THE INFORMATION COMMISSIONER OF CANADA

Respondent

A-379-08

BETWEEN:

THE INFORMATION COMMISSIONER OF CANADA

Appellant

(Respondent on cross-appeal)

and

THE PRIME MINISTER OF CANADA

Respondent

(Appellant on cross-appeal)

Heard at Ottawa, Ontario, on May 27, 2009.

Judgment delivered at Ottawa, Ontario, on May 29, 2009.

**REASONS FOR JUDGMENT BY:
CONCURRED IN BY:**

**SHARLOW J.A.
RICHARD C.J.
SEXTON J.A.**

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and

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Respondent

REASONS FOR JUDGMENT

SHARLOW J.A.

[1] This is an appeal by the Commissioner of the Royal Canadian Mounted Police (A-413-08), and a cross-appeal by the Prime Minister of Canada (A-379-08), of the portion of the judgment of Justice Kelen (2008 FC 766) that reflects his conclusion that certain records under the control of the Royal Canadian Mounted Police (RCMP) and the Privy Council Office (PCO) that contain the

Prime Minister's agenda (or parts of it) are subject to disclosure under the *Access to Information Act*, R.S.C. 1985, c. A-1 (2008 FC 766, at paragraphs 101 to 127).

[2] The RCMP and the PCO are "government institutions" as defined in the *Access to Information Act*. Therefore, records under their control are subject to disclosure, subject to a number of statutory exceptions. One of the exceptions is found in subsection 19(1) of the *Access to Information Act*, which precludes the disclosure of "personal information as defined in section 3 of the *Privacy Act*."

[3] The definition of "personal information" in section 3 of the *Privacy Act*, R.S.C. 1985, c. P-21 reads in relevant part as follows (my emphasis):

3. In this Act,

"personal information" means information about an identifiable individual that is recorded in any form including, without restricting the generality of the foregoing [...]

[...]

but, for the purposes of sections 7, 8 and 26 and section 19 of the *Access to Information Act*, does not include

(j) information about an individual who is or was an officer or employee of a government institution that relates to the position or functions of the individual including,

- (i) the fact that the individual is or was an officer or employee of the government institution,
- (ii) the title, business address and telephone number of the individual,
- (iii) the classification, salary range and

3. Les définitions qui suivent s'appliquent à la présente loi.

« renseignements personnels » Les renseignements, quels que soient leur forme et leur support, concernant un individu identifiable, notamment [...]

[...]

toutefois, il demeure entendu que, pour l'application des articles 7, 8 et 26, et de l'article 19 de la *Loi sur l'accès à l'information*, les renseignements personnels ne comprennent pas les renseignements concernant :

j) un cadre ou employé, actuel ou ancien, d'une institution fédérale et portant sur son poste ou ses fonctions, notamment :

- (i) le fait même qu'il est ou a été employé par l'institution,
- (ii) son titre et les adresse et numéro de téléphone de son lieu de travail,

responsibilities of the position held by the individual,

(iii) la classification, l'éventail des salaires et les attributions de son poste,

(iv) the name of the individual on a document prepared by the individual in the course of employment, and

(iv) son nom lorsque celui-ci figure sur un document qu'il a établi au cours de son emploi,

(v) the personal opinions or views of the individual given in the course of employment [...].

(v) les idées et opinions personnelles qu'il a exprimées au cours de son emploi [...].

[4] It is undisputed that the records in issue are under the control of the RCMP and the PCO, which are “government institutions” as defined in the *Privacy Act*. It is also undisputed that the records contain information about the Prime Minister, which is *prima facie* “personal information” within the scope of the statutory definition. The information relates to the position or functions of the Prime Minister, which means that paragraph (j) is potentially in play. It follows that the records cannot be disclosed unless the exception in paragraph (j) applies. That exception will apply, and the records must be disclosed, if the Prime Minister is an “officer of a government institution” within the meaning of those words as used in the *Privacy Act*.

[5] Justice Kelen concluded that the Prime Minister is an officer of a government institution, and ordered the disclosure of the records. In reaching that conclusion, he relied on the statutory definitions of “public officer” in the *Financial Administration Act*, R.S.C. 1985, c. F-11, and the *Interpretation Act*, R.S.C. c. I-21. I agree with the Commissioner of the RCMP and the Prime Minister that Justice Kelen erred in law in importing into the *Privacy Act* the definitions of “public officer” from statutes dealing with different subjects that use that term in different contexts. The meaning of the phrase “officer of a public institution” as used in the *Privacy Act* should be

determined from the contextual factors within the *Privacy Act* itself (including its legislative history), and other statutes that are related or deal with the same subject matter, such as the *Access to Information Act*.

[6] The Information Commissioner argues that, because the Prime Minister presides over the PCO, the Prime Minister is an “officer” of the PCO (or, in French, *un « cadre » du Bureau du Conseil privé*). There would be considerable force in this argument if paragraph (j) of the definition of “personal information” in the *Privacy Act* were read literally and in isolation from the rest of the *Privacy Act*.

[7] However, as this Court found in three related appeals delivered orally yesterday (*Information Commissioner of Canada v. Minister of National Defence et al.*, 2009 FCA 175), the *Access to Information Act* was drafted on the basis of a well understood convention that the Prime Minister’s office is an institution of government that is separate from the PCO. It was for that reason that this Court agreed with Justice Kelen that the Prime Minister’s office is a government organization that is separate from the PCO.

[8] The same understanding about the special governmental role of the Prime Minister would have formed part of the foundation for the drafting of the *Privacy Act*. It follows, in my view, that if Parliament had intended the Prime Minister to be treated as an “officer” of the PCO for the purposes of the *Privacy Act*, it would have said so expressly. It also follows that it would be inconsistent with the intention of Parliament to interpret the *Privacy Act* in a way that would include the Prime

Minister within the scope of the phrase “officer of a government institution” as used in paragraph (j) of the definition of “personal information” in section 3 of the *Privacy Act*.

[9] For these reasons, the appeal in A-413-08 will be allowed with costs, and the cross-appeal in A-379-08 will be allowed without costs, as none were sought. A copy of these reasons will be placed in each of the Court Files A-379-08 and A-413-08.

“K. Sharlow”

J.A.

“I agree.
J. Richard C.J.”

“I agree.
J. Edgar Sexton J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-413-08

STYLE OF CAUSE: The Commissioner of the Royal
Canadian Mounted Police v. The
Information Commissioner of
Canada

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: May 27, 2009

REASONS FOR JUDGMENT BY: SHARLOW J.A.

CONCURRED IN BY: RICHARD C.J.
SEXTON J.A.

DATED: May 29, 2009

APPEARANCES:

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Christopher Rupar
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