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

ORDER PO-2006

Appeal PA-010081-1

Ministry of the Attorney General

80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9195
TTY: 416-325-7539
http://www.ipc.on.ca

BACKGROUND:

The Children's Lawyer for Ontario

The Children's Lawyer for Ontario (formerly the Official Guardian) is appointed by the Lieutenant Governor in Council, on the recommendation of the Attorney General, under section 89(1) of the *Courts of Justice Act* (*CJA*). To be appointed as the Children's Lawyer, the person must be a lawyer belonging to a bar of one of the provinces or territories of Canada [*CJA*, section 89(2)].

The Children's Lawyer has a duty to act as litigation guardian for a minor who is a party to a proceeding, where required to do so by an Act or the rules of court [*CJA*, section 89(3)]. For example, in a personal injury case, the court may order that the Children's Lawyer act as litigation guardian for a minor plaintiff in the action [see rule 7.01-7.02 of the Rules of Civil Procedure, in the *CJA* regulations].

Also, at the request of a court, the Children's Lawyer may act as the legal representative of a minor who is not a party to a proceeding [*CJA*, section 89(3.1)]. For example, in a child protection case, the court may request that the Children's Lawyer act as the minor's legal representative in the proceedings [see section 38 of the *Child and Family Services Act* (*CFSA*)].

The Office of the Children's Lawyer (the OCL) operates as a branch of the Ministry of the Attorney General.

The OCL itself engages the services of lawyers to discharge its responsibilities. Some of these lawyers are "in-house" employees, while others work as "agents" on a retainer basis.

Facts giving rise to this request

In 1993, at the age of 10, the appellant injured her head in a school bus accident. The appellant claimed statutory accident benefits from her mother's automobile insurer because of her injury. The insurer paid these benefits for some time, but apparently it ceased paying at some point, and brought an application to the Superior Court of Justice for an order requiring the appellant to undergo a neuropsychological examination and for production of the appellant's medical records. In this application, the court appointed the OCL as litigation guardian for the appellant. Although the OCL on behalf of the appellant opposes the application, the parties have reached a tentative settlement. However, the settlement has not yet been approved by the court, as it must be in cases involving minors (see rule 7.08 of the Rules of Civil Procedure). The OCL assigned this matter to one of its staff lawyers, but has also retained outside counsel, who is lead counsel on the file.

The Superior Court of Justice has also appointed the OCL as litigation guardian for the appellant in civil litigation arising from a series of accidents in which her mother was injured, dating back several years. In this action, the appellant seeks damages for loss of her mother's care, guidance and companionship, under the *Family Law Act*. Settlement discussions are underway but no agreement has been reached. The OCL assigned this matter to one of its staff lawyers.

(I will sometimes refer to these two matters collectively as the "civil litigation" files.)

Finally, pursuant to an order of the Superior Court of Justice, Family Court, and section 38 of the *CFSA*, the OCL provided legal representation to the appellant in child protection proceedings brought by a children's aid society concerning the appellant. Those proceedings led to a trial, and in February 2001 the court made a supervision order under section 57(1)1 of the *CFSA*. The OCL retained outside counsel for this proceeding. (I will refer to this matter as the "child protection" file.)

NATURE OF THE APPEAL:

The appellant submitted a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of the Attorney General (the Ministry) for access to all records relating to her held by the OCL. The appellant also provided the Ministry with the consent of two individuals (the appellant's mother and aunt) to disclosure of their personal information.

The Ministry identified approximately 3,700 pages of records responsive to the request, originating from the civil litigation files and the child protection file. The Ministry granted access to some of them, but withheld approximately 1,000 pages. The Ministry stated that it was relying on the exemptions at sections 13 (advice to government) and 19 (solicitor-client privilege) of the *Act* to deny access to the withheld records.

The appellant then appealed the Ministry's decision to this office.

Later, during the mediation stage of the appeal, the Ministry indicated that it was also relying on the section 21 exemption (personal privacy) to withhold information.

Subsequently, the Ministry disclosed two additional records to the appellant originally withheld under section 21.

The appeal was then moved to the adjudication stage of the process. I sent a Notice of Inquiry setting out the issues in the appeal initially to the Ministry. Subsequently, the Ministry disclosed an additional 13 pages to the appellant. The Ministry then provided its representations in response to the Notice of Inquiry. I then sent the non-confidential portions of the Ministry's representations, together with a Notice of Inquiry, to the appellant. An agent for the appellant provided representations in response. I later sent the non-confidential portions of the appellant's representations to the Ministry. In my cover letter, I asked the Ministry to provide representations on the applicability of eight court decisions, and to respond to a series of questions. The Ministry provided representations in reply. On the same date as it sent in its reply representations, the Ministry sent the appellant an additional 124 pages of the records in full, and 3 pages in part.

RECORDS:

The records remaining at issue consist of approximately 933 pages of records, including correspondence, memoranda, notes, and notes of telephone conversations.

DISCUSSION:

PERSONAL INFORMATION

The first issue to be determined is whether or not the records contain personal information and, if so, to whom that information relates. Under section 2(1) of the *Act*, "personal information" is defined, in part, to mean recorded information about an identifiable individual.

The Ministry submits:

> The Ministry has released to the [appellant] all of her own personal information, as well as the personal information of people who have consented to the disclosure.
>
> The records contain personal information (as defined in section 2(1)) of other individuals: Phone numbers, addresses, VISA numbers, employment and educational history . . .

The appellant makes no specific submissions on this issue.

All of the records at issue contain information about the appellant and her involvement in the matters giving rise to the litigation in question, including information about her medical condition. This information qualifies as "personal information" as that term is defined in section 2(1) of the Act. A small proportion of the records also contain personal information about other individuals.

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/SOLICITOR-CLIENT PRIVILEGE

Introduction

Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exceptions to this general right of access.

Under section 49(a) of the *Act*, the institution has the discretion to deny an individual access to their own personal information in instances where the exemptions in sections 12, 13, 14, 15, 16, 17, 18, 19, 20, 20.1 or 22 would apply to the disclosure of that information. In this case, the Ministry relies on section 19 as a basis to withhold records from both the civil litigation and child protection files.

Section 19 of the *Act* reads:

> A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation.

Section 19 encompasses two heads of privilege: (i) solicitor-client communication privilege; and (ii) litigation privilege. I will consider both heads of privilege below.

Solicitor-client communication privilege

Introduction

Solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining professional legal advice.

This privilege has been described by the Supreme Court of Canada as follows:

> ... all information which a person must provide in order to obtain legal advice and which is given in confidence for that purpose enjoys the privileges attaching to confidentiality. This confidentiality attaches to all communications made within the framework of the solicitor-client relationship ... [*Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 at 618, cited in Order P-1409]

The privilege has been found to apply to "a continuum of communications" between a solicitor and client:

> . . . the test is whether the communication or document was made confidentially for the purposes of legal advice. Those purposes have to be construed broadly. Privilege obviously attaches to a document conveying legal advice from solicitor to client and to a specific request from the client for such advice. But it does not follow that all other communications between them lack privilege. In most solicitor and client relationships, especially where a transaction involves protracted dealings, advice may be required or appropriate on matters great or small at various stages. There will be a continuum of communications and meetings between the solicitor and client ... Where information is passed by the solicitor or client to the other as part of the continuum aimed at keeping both informed so that advice may be sought and given as required, privilege will attach. A letter from the client containing information may end with such words as "please advise me what I should do." But, even if it does not, there will usually be implied in the relationship an overall expectation that the solicitor will at each stage, whether asked specifically or not, tender appropriate advice. Moreover, legal advice is not confined to telling the client the law; it must include advice as

> to what should prudently and sensibly be done in the relevant legal context [*Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.), cited in Order P-1409].

Solicitor-client communication privilege has been found to apply to the legal advisor's working papers directly related to seeking, formulating or giving legal advice [*Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27, cited in Order M-729].

OCL's representations

The OCL submitted representations on behalf of the Ministry. With respect to the civil litigation files, the OCL submits:

> . . . The role of litigation guardian is unique to civil litigation. Unlike the situation with a trustee or a tutor at civil law, it is clear that no interest in the minor's cause of action or in the fruits thereof is at any time vested in the litigation guardian. (*Lucas v. Coupal* (1930), 66 O.L.R. 141). However, the litigation guardian does have full power over the ordinary proceedings and conduct of the action, such as giving consent to the evidence taken by affidavit. (*Vano v. Canadian Coloured Cotton Mills Co.*, [1910] 21 O.L.R. 144 (H.C.) at 148). Rule 7.05(1) [of the Rules of Civil Procedure] provides the litigation guardian with the authority to do anything required or authorized to be done by a party. The Rule goes on to require that a litigation guardian protect the interests of the minor. The powers of the litigation guardian are limited in that compromises made by a litigation guardian are not binding on a minor without court approval (Rule 7.08).
>
> Rule 7.05(3) requires that a litigation guardian other than the [OCL] or the Public Guardian and Trustee [PGT] be represented by a solicitor and instruct that solicitor in the conduct of the action. As Holmestead and Watson point out at page 7-31 of *Ontario Civil Procedure*, this is not really an anomaly since both the [OCL] and [PGT] are required to be lawyers themselves and most often are represented in court by staff counsel or privately retained counsel. Thus, the litigation guardian provides instructions to his or her counsel with respect to the conduct of the action. It is not the child him or herself who instructs the lawyer. Accordingly, any solicitor-client relationship is between the litigation guardian and his counsel. The litigation guardian is answerable to the court for his or her actions on behalf of the minor.
>
> Therefore lawyers, either in-house or outside counsel, act as counsel to the [OCL], the litigation guardian for a child. They take the [OCL]'s instructions and are bound by solicitor and client privilege. This privilege exists between the [OCL] and the lawyer representing him in the case. The [OCL] is bound to the court to protect the interests of the minor but is not his/her solicitor in the traditional sense, as the child has no capacity to retain counsel.
>
> . . . . .

> In the civil litigation files, the solicitor-client relationship is between Willson A. McTavish, the Children's Lawyer, and [named in-house counsel] and [named outside counsel] who are acting on behalf of the [OCL], who is the litigation guardian for the [appellant].

The OCL makes further submissions with respect to the civil litigation files, in its reply, as follows:

> . . . It is the practice of the Children's Lawyer to have in-house staff or an outside lawyer act as counsel for him, when he is fulfilling his duties as litigation guardian ... The child is not the client; the Children's Lawyer is the client and has counsel acting for him in the proceeding. The litigation is conducted for the benefit of the child but she is not the client of the Children's Lawyer counsel. The Children's Lawyer, therefore, has a unique role in the administration of justice as litigation guardian. He is appointed to represent the interests of a particular class of persons – children – and cannot be dismissed by them. Only a judge can remove him as litigation guardian. He does not act on the instructions of the minor for whom he acts as litigation guardian, but instead has complete control over the conduct of the case, making use of the legal advice of in-house counsel or a privately retained lawyer. His decision to settle a case for the benefit of the child must be approved by a judge.

Regarding the child protection file, the OCL submits:

> . . . [I]n the [child protection] file, [named outside counsel], who was retained by OCL to provide legal representation to a child pursuant to an order made under s. 38 of the [*CFSA*], is Crown counsel for the purpose of the child protection proceeding. [Named outside counsel] was closely supervised by staff at OCL in this matter. In this file, however, the solicitor-client relationship is between [the appellant] and [named outside counsel], and not between the [OCL] and [named outside counsel]. Order P-1075 recognizes that there is a solicitor-client relationship between a child and counsel in a personal rights case.
>
> . . . . .
>
> . . . The appellant has argued that the child's legal representative acts according to the child's instructions; however, this is unsupported by the case law and in any event has no bearing on the issue of the child's access to the file. The relationship of counsel with a child client differs from a traditional solicitor-client relationship in that the child, as a minor, cannot legally instruct counsel. Counsel's role is to put the child's views and preferences before the court, and provide the court with the context behind those wishes: see Role of Child's Counsel Policy Statement which has been published by OCL. A child may have counsel even if that child cannot articulate views and preferences: [*Ontario (Official Guardian v. S.M.* (1991), 35 R.F.L. (3d) 297 (Ont. Gen. Div.)]. Similarly, in [*Children's Aid Society of the United Counties of Stormont, Dundas and Glengarry v. R.R.*, [1996] O.J. No. 1160], counsel for a young child sought to be removed as counsel of

record, and the request was dismissed, on the basis that child's counsel could still be of assistance to the court. Justice Blishen stated, as paragraph 5,

> > . . . certainly in acting for any child, the role of the counsel is not just to appear in court but certainly is to look at the whole picture and to have, therefore, something useful to offer to the court, not only in terms of submissions, but in terms of the questioning of witnesses and in bringing out all the evidence that may indeed be relevant to the ultimate issue before the court, "What is in the best interests of this particular child?"
>
> . . . counsel's advocacy role in personal rights cases includes providing to the court the context of a child's wishes and is not limited to advising the court of the child's wishes.

In my letter to the OCL seeking reply representations, I asked specific questions about the nature of the relationship between it and the appellant. In response, the OCL submits:

> . . . [T]he relationship between a child and counsel must also be considered in light of the fact that the OCL is involved in public interest law, in the representation of persons under a legal disability, namely children; this role is distinct from private interest law, where counsel represents a party who is not under a legal disability, and the role is strictly to advocate based on the instructions of the client.
>
> . . . . .
>
> . . . In its capacity as either litigation guardian or as counsel for the child, there is no contractual relationship between OCL and the child, or between counsel retained by OCL and the child.
>
> . . . . .
>
> . . . It is clear from an examination of the definition of "agency" that, in the civil litigation and child protection files, OCL and counsel retained by OCL were not acting as the appellant's agent.
>
> . . . . .
>
> An agent acts on behalf of and subject to the control of the principal. Minors have either no capacity or only a limited capacity to appoint an agent. A minor can only appoint an agent in circumstances in which he himself has the power to act. The [*CJA*] and the Rules of Civil Procedure make it clear that a child does not have the power to act on his own in civil litigation cases; a child has a litigation guardian. In child protection cases, a child who has legal representation is entitled to have his views and preferences put before the court and have his legal interests advanced, but does not control the activity of counsel in a principal-agent relationship. OCL or counsel retained by OCL are not controlled by the child; in civil litigation cases, the Children's Lawyer makes all decisions in the litigation; in child protection, the child expresses views and preferences but does not instruct counsel because he/she is a minor.

. . . . .

It is clear from a definition of trust, that the OCL or counsel retained by OCL does not act as trustee for children.

. . . . .

The trust relationship is proprietary in nature. In our cases, there is no property that OCL or counsel is holding on behalf of the child.

. . . . .

A solicitor/client, principal/agent, and trustee/beneficiary relationship all give rise to a fiduciary relationship . . . [A]lthough the OCL may have some fiduciary duties towards the appellant, this does not have an impact on the appellant's right to access information in the hands of OCL. The fact that this relationship may exist only influences the duty of care that is owed by OCL to the appellant which is ultimately reviewed by a judge at the time the proceedings in the civil litigation files are concluded by a judgment.

Appellant's representations

With regard to the child protection files, the appellant submits:

> In [child protection] cases, the child is entitled to rely upon the fact that the legal representative appointed for them acts according to their instructions. The relationship of the legal representative to the child, therefore, is one of solicitor and client. This relationship was acknowledged by the [OCL] in their written submissions . . . Accordingly, the right to claim a privilege over the [child protection] file should belong to [the appellant] . . .
>
> . . . . .
>
> It is trite law that in all cases the privilege is one that belongs to the client and not to the lawyer. Accordingly, if [the appellant] wants to obtain these documents from her lawyer [the appellant] should be able to do so.
>
> . . . . .
>
> . . . [T]he claim that the [OCL] is making is not that it owns the file. Instead, it is making a much broader claim that it is not even required to advise the client about what happened in the file. Claims of privilege are only designed to protect documents, such as correspondence and draft documents, from being released to a third party. The claim of privilege was never designed to allow a lawyer to keep such information away from a client.

Regarding the civil litigation files, the appellant submits:

> There is only one difference between a situation where the [OCL] is appointed as a legal representative and where it is appointed as a litigation guardian - rule 7.05 of the Rules of Civil Procedure makes it perfectly clear that the litigation guardian, rather than the incapable client, is the one who is entitled to instruct the lawyer. The issue thus becomes, does this distinction mean that [the appellant] ceases to be a client when the [OCL] acts for her as her litigation guardian?

In order to resolve this issue, one must consider two subsidiary [issues] – what is the definition of a client and what effect does the appointment of a litigation guardian have on [the appellant]'s role in the [civil litigation files].

Unfortunately, there is not much judicial consideration of the word "client". However, the Dictionary of Canadian Law (2nd ed.) defines the word as follows: "1. A person who receives services. 2. A person or body of persons on whose behalf a lawyer receives money for services. 3. A person or body of persons on whose behalf an agent receives money in connection with his business." This definition has been approved by the court in *Baker v. Commercial Union Assurance Co. of Canada* (1995), 33 C.P.C. (3d) 133, 141 . . .

It is important to note that under this definition it is not necessary that there be a direct contractual link between the solicitor and the client. Instead, the client is the person who is actually receiving the services, or on whose benefit the solicitor is working. In the various litigation files it is [the appellant] who actually received the services from the various lawyers (if services were in fact provided), and therefore it is [the appellant] who is entitled to be characterized as the client.

When a litigation guardian is appointed under Rule 7, that person – unless the litigation guardian is either the [OCL] or the [PGT] – has the obligation to retain a lawyer: Rule 7.03(2) and 7.05(3). The [OCL] and the [PGT] are excluded from this requirement in part because it is known that they have a complement of lawyers on staff who undertake legal representation for persons under disability. Based on this provision it can be assumed that there is a contractual relationship between the litigation guardian and the counsel appointed to represent the person under disability, and that the litigation guardian will be instructing that counsel as to the steps to be taken in the proceeding. There is no doubt that this relationship can be characterized as solicitor and client in nature. The only question is whether that relationship precludes characterizing the person under disability as a client of the same counsel.

In answering this question it is important to note that the litigation guardian cannot enter into a binding settlement of a case involving a person under disability without it first being approved by a court. Rule 7.08. Moreover, the person under disability is ultimately liable for any costs in the action. See *Graves v. Dufferin Paving Ltd.*, [1942] O.W.N. 76 (H.C.J.); reversed on other grounds, [1942] O.W.N. 498 (C.A.). Only in unusual circumstances will the litigation guardian be liable for costs, and that liability is not because he or she is the client in the case but he or she is the one making the decision. Rule 57.06.

Although the [OCL] has agreed that [the appellant] was in a solicitor client relationship with [outside counsel] in the child protection proceeding, it is also important to note that [the appellant] was not a party in that case. Nor could she

> be, although [the appellant] was entitled to be accorded certain rights "as if she were a party". [*CFSA*], s. 39 and 39(6). There is [no] such limitation in the Rules of Civil Procedure. In those proceedings, therefore, [the appellant] was *the party to the proceeding* even though she had to act through a litigation guardian. See *Re Whittal*, [1973] 3 All E.R. 35 (Ch. Div.).
>
> Of course it is obvious that any success that [the appellant] would have in any of the civil litigation matters would accrue to her directly, and not to the litigation guardian. When various lawyers acted in those cases, therefore, they were acting for the benefit of [the appellant] although in doing so they took instructions from the litigation guardian.
>
> In every sense of the word, except for the ability to contract and instruct, [the appellant] was the client of the various lawyers in the civil litigation cases. This inability to retain and instruct stems directly from the fact that at law children cannot contract for such things. Moreover, the limited role that the litigation guardian assumes in these cases is consistent with the provisions of the *Substitute Decisions Act* . . . s. 22(3) that demand the least intrusive interference with the lives of incapable people. Accordingly, a person under disability like [the appellant] has to be considered to be a client for all purposes except for retaining and instructing counsel.

Analysis

Introduction

I agree with the appellant that it is trite law that solicitor-client communication privilege is one that belongs to the client and not to the lawyer, and that a claim of privilege cannot be sustained as against the client. As stated by R. Manes and M. Silver in *Solicitor-Client Privilege in Canadian Law*, (Toronto: Butterworths, 1993), at page 187: "The recipient of solicitor-client privilege is the client. It is for the client's benefit that the privilege exists . . ."

Before deciding whether solicitor-client communication privilege applies, it is necessary to analyze the relationships in the three litigation matters, determine where a solicitor-client relationship exists and determine who the client is.

Civil litigation files

The OCL argues that, in the civil litigation, no solicitor-client relationship exists as between the appellant, as client, and the OCL and its counsel. The OCL further submits that the only solicitor-client relationship that exists is between the OCL and its counsel, whether in-house or outside. It relies on the facts that it, not the appellant, has the power to make procedural decisions in the proceedings (see rule 7 of the Rules of Civil Procedure) and that the appellant has no power to instruct the OCL or its counsel on the conduct of the litigation.

In *Commercial Union Assurance Co. of Canada v. Baker* (cited by the appellant), the court stated the following with respect to the definition of "client":

> In my view "client", for the purposes of determining solicitor-client privilege, should not be defined restrictively or technically, nor should it be a term of art. Seeking and receiving professional legal advice is at the heart of the solicitor-client relationship, and whether or not a charge is made for the advice to the person receiving it, or another person, or at all has little to do with it.

The OCL's suggested approach to determining who is the client is overly technical, and I decline to follow it. While relevant, the fact that a person gives instructions or has the power to make procedural decisions in litigation is not determinative. As set out below, there are far stronger indications here that the appellant is the client.

The appellant, not the OCL, is the party to both civil proceedings, and it is her rights and/or obligations, not the OCL's, that are to be determined by the court. Second, as the OCL concedes, the case law indicates that no interest in the minor's cause of action or in the fruits thereof is at any time vested in the OCL [see *Lucas v. Coupal*, cited by the OCL above]. Third, as is clear from the Rules of Civil Procedure, the OCL has no power to enter into a settlement of the litigation, without court approval [rule 7.08]. Fourth, the Rules of Civil Procedure state that the OCL "shall diligently attend to the interests of the [minor] and take all steps necessary for the protection of those interests . . . [rule 7.05(2)]." While the OCL has control over procedural decisions made in the litigation, these decisions must be made strictly in the appellant's interest, which conflicts with the OCL's view that it is the client. The OCL agrees that it "may have some fiduciary duties towards the appellant" and that it owes the appellant "a duty of care". Finally, the minor may be liable for any costs incurred on his or her behalf [see *Rooney v. Jasinski*, [1952] O.R. 869 (C.A.)].

In the first civil litigation file, I find that a solicitor-client relationship exists between the appellant as client and the OCL and its retained counsel, both as solicitors. The relationship between the OCL and its outside counsel is properly characterized as one of agent-principal, rather than solicitor-client. This is not an unusual arrangement in other areas of law. For example, where a lawyer acts for a client in a real estate matter, and a litigation issue arises, the lawyer may seek the services of a specialist litigation lawyer, as an agent, to give advice on the latter issue. While the first lawyer may take care of the administrative details of retaining the second lawyer, and while the second lawyer may have little or no contact with the client, there is no question that both lawyers are duty bound to act in the interests of the client.

In the second civil litigation file, a solicitor-client relationship also exists between the appellant and the OCL.

Therefore, in both civil litigation cases, the appellant is the client, and a claim of solicitor-client privilege cannot be sustained as against the appellant.

Even if it could be said that there exists a separate solicitor-client relationship between OCL and its counsel and the OCL and the child could be considered joint clients of counsel, privilege cannot be sustained by one client as against the other [see *Tatone v. Tatone*, [1980] O.J. No. 2789 (Master); and *Western Assurance Co. v. Canada Life Assurance Co.* (1987), 63 O.R. (2d) 276 (Master)].

Child protection files

In the child protection litigation, the three persons in question are: (i) the appellant; (ii) the OCL; and (iii) outside counsel. I agree with the OCL that in this context a solicitor-client relationship exists between the appellant and outside counsel (see Order P-1075). This is supported by the wording of section 89(3.1) of the *CJA* and section 38 of the *CFSA* and consistent with the OCL's submission to the court in *Landau v. Ontario (Official Guardian)* (1984), 47 O.R. (2d) 346 (Master).

Since the appellant is the client, a claim of solicitor-client communication privilege cannot be sustained against her. No privilege applies to communications between the OCL and its counsel in the ordinary course of representing the appellant's interests in this file.

Rationale for the privilege

Even if there were a solicitor-client relationship between the OCL and its (outside or retained) counsel in the litigation matters, the privilege cannot apply. As stated by R. Manes and M. Silver in *Solicitor-Client Privilege in Canadian Law*, at page 7:

> . . . [W]here there is doubt about the applicability of the privilege rule, reference is often had to the rationale for the rule. Where the rationale exists in the situation at bar, privilege will probably apply. Where the rationale does not exist or has ceased to exist, privilege will be inapplicable. Thus, any analysis of privilege must be undertaken with specific regard to the facts of the case, and analyzed, at least implicitly, from the standpoint of the rationale for the rule.

In *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.), Mr. Justice Doherty, speaking for the court, conducted a comprehensive analysis of the purpose of solicitor-client communication privilege, part of which is set out below (pages 326, 347-348):

> The rationale underlying the privilege informs the perimeters of that privilege. It is often justified on the basis that without client-solicitor privilege, clients and lawyers could not engage in the frank and full disclosure that is essential to giving and receiving effective legal advice. Even with the privilege in place, there is a natural reluctance to share the "bad parts" of one's story with another person. Without the privilege, that reluctance would become a compulsion in many cases: *Anderson v. Bank of British Columbia* (1876), 2 Ch. D. 644 at p. 649, [1874-80] All E.R. Rep. 396; *Smith v. Jones*, [1999] 1 S.C.R. 455 at p. 474, 22 C.R. (5th)

> 203 at p. 217, per Cory J.; J.W. Strong, ed., *McCormick on Evidence*, 4th ed. (St. Paul, Minn.: West Publishing Co., 1992), vol. 1, at p. 353.
>
> While this utilitarian purpose is central to the existence of the privilege, its rationale goes beyond the promotion of absolute candor in discussions between a client and her lawyer. The privilege is an expression of our commitment to both personal autonomy and access to justice. Personal autonomy depends in part on an individual's ability to control the dissemination of personal information and to maintain confidences. Access to justice depends in part on the ability to obtain effective legal advice. The surrender of the former should not be the cost of obtaining the latter. By maintaining client-solicitor privilege, we promote both personal autonomy and access to justice: *Goodman Estate v. Geffen*, [1991] 2 S.C.R. 353 at pp. 382-83, 81 D.L.R. (4th) 211 at pp. 231-32, per Wilson J.; *Solosky v. R.*, [1980] 1 S.C.R. 821 at p. 839, 50 C.C.C. (2d) 495 at p. 510; *Descôteaux v. Mierzwinski*, supra, at pp. 892-93 S.C.R., pp. 413-14 C.C.C.; *A. (L.L.) v . B. (A.)*, [1995] 4 S.C.R. 536 at pp. 559-60, 103 C.C.C. (3d) 92 at pp. 107-08, per L'Heureux-Dubé J. (concurring); *R. v. Shirose*, supra, at p. 601 S.C.R., p. 288 C.C.C.; *Baker v. Campbell* [(1983), 153 C.L.R. 52 at 18-120 (H.C.), per Deane J.].
>
> The privilege also serves to promote the adversarial process as an effective and just means for resolving disputes within our society. In that process, the client looks to the skilled lawyer to champion her cause against that of her adversaries. The client justifiably demands the undivided loyalty of her lawyer. Without client-solicitor privilege, the lawyer could not serve that role and provide that undivided loyalty . . .
>
> . . . . .
>
> In summary, I see the privilege as serving the following purposes: promoting frank communications between client and solicitor where legal advice is being sought or given, facilitating access to justice, recognizing the inherent value of personal autonomy and affirming the efficacy of the adversarial process. Each of these purposes should guide the application of the established criteria when determining the existence of client-solicitor privilege in specific fact situations.

Doherty J.A. emphasized the importance of the context of the claim and, specifically, the relationship between the parties (at page 349):

> It is . . . necessary to consider the context of the claim, by which I mean the circumstances in which the privilege is claimed. For example, in this case, the insurer claims client-solicitor privilege against its insured in part in respect of the product of its investigation of a possible claim by the insured under its policy. The pre-existing relationship of the insured and insurer and the mutual obligations of good faith owed by each to the other must be considered in determining the validity of the insurer's assertion that it intended to keep information about the

> investigation confidential vis-à-vis its insured. The confidentiality claim cannot be approached as if the parties were strangers to each other.

Confidentiality is fundamental to the privilege (at page 349):

> The confidentiality of the communications is an underlying component of each of the purposes which justify client-solicitor privilege. In McCormick, supra, at p. 333, it is said:
>
> > It is of the essence of the privilege that it is limited to those communications which the client either expressly made confidential or which he could reasonably assume under the circumstances would be understood by the attorney as so intended.
>
> The centrality of confidentiality to the existence of the privilege helps make my point that the assessment of a claim to client-solicitor privilege must be contextual. Sometimes the relationship between the party claiming the privilege and the party seeking disclosure will be relevant to determining whether the communication was confidential. For example, the reciprocal obligations of an insured and an insurer to act in good faith towards each other are well-established: *Canadian Indemnity Co. v. Canadian Johns-Manville Co.*, [1990] 2 S.C.R. 549 at pp. 620-21, 72 D.L.R. (4th) 478; *Coronation Insurance Co. v. Taku Air Transport Ltd.*, [1991] 3 S.C.R. 622 at p. 636, 85 D.L.R. (4th) 609.

In short, there are situations in which the privilege cannot be sustained, because of the nature of the relationship between the parties and the surrounding circumstances, even if the document would be privileged if sought by an "outsider". This principle may apply between insurer and insured [*Chersinoff v. Allstate Insurance Co.* (1969), 3 D.L.R. (3d) 560 (B.C. C.A.); *Abick v. Continental Insurance Co.*, [2001] O.J. No. 609 (S.C.J.)], trustee and beneficiary [*Froese v. Montreal Trust Co. of Canada*, [1994] B.C.J. No. 474 (S.C.)], and agent and principal [*McKinlay Transport Ltd. v. Ontario (Motor Transport Industrial Relations Bureau)*, [1991] O.J. No. 1410 (Master), affirmed [1992] O.J. No. 5 (Gen. Div.), leave to appeal refused [1992] O.J. No. 303 (Gen. Div.)].

Application of the rationale

Vis-à-vis the appellant, the rationale for solicitor-client communication privilege does not exist for communications between the OCL and its counsel for purposes of representing the appellant.

It is not reasonable for the OCL to expect that communications between it and its counsel in the ordinary course of the litigation would remain confidential as against the appellant, the individual for whom they are acting. An essential underpinning of the privilege is therefore absent. Disclosure to the appellant would not have a "chilling effect" on "frank and full disclosure" by the OCL to its counsel in future cases. The OCL is not "sharing its story" with its counsel, because "it does not have a story." The only "story" to be shared is that of the minor for

whom the OCL is acting. Even if disclosure to the appellant could have a chilling effect in future cases, it would be contrary to public policy for the OCL to "keep secrets" from the individual whose rights and interests it is mandated to protect. This principle is, of course, subject to other legitimate exemption claims designed to protect an individual's privacy (sections 49(b)/21) or health and safety (sections 49(a)/20)).

In *General Accident Assurance Co. v. Chrusz*, Mr. Justice Doherty described the privilege as an expression of personal autonomy which "depends in part on an individual's ability to control the dissemination personal information"; this includes access to one's own information. Here, a finding that privilege applies would undermine this principle. I accept that the *CJA* scheme takes away some degree of personal autonomy from the child when the OCL is appointed, removing her ability to instruct counsel; however, there is nothing in the *CJA*, the *CFSA* or otherwise, to suggest that this necessary and limited curtailment should take away the child's "right to know" what is happening.

While disclosure of otherwise privileged records to the outside world might inhibit the OCL from retaining or employing counsel, this reasoning does not hold true in respect of disclosure to parties represented by the OCL.

I see no reason why disclosure of the records to the appellant would undermine the adversarial process. If the OCL's counsel were to disclose the appellant's personal information to an outside party, this would undermine the undivided loyalty of the lawyer to the appellant and the OCL. The same reasoning does not apply where it is the appellant seeking her own information.

In summary, none of the purposes of solicitor-client communication privilege is present here. There is no reasonable basis on which the OCL could expect that its communications made in the ordinary course of representing the appellant would be kept confidential in this case.

Solicitor-client communication privilege under section 19 of the *Act* does not apply, with some exceptions as discussed below under the heading "Records the OCL claims were not prepared for purpose of representing the appellant".

I will now turn to the application of litigation privilege.

Litigation privilege

Introduction

The OCL claims that most, if not all, of the withheld records are subject to litigation privilege under section 19 of the *Act*.

Litigation privilege protects records created for the dominant purpose of existing or reasonably contemplated litigation [Order MO-1337-I; *General Accident Assurance Co. v. Chrusz* (above).

Rationale for the privilege

Justice Carthy, speaking for the majority in *General Accident Assurance Co. v. Chrusz*, explained the purpose of litigation privilege (as distinct from solicitor-client communication privilege):

> The origins and character of litigation privilege are well described by Sopinka, Lederman and Bryant in *The Law of Evidence in Canada* (Toronto: Butterworths, 1992), at p. 653:
>
> > . . . [The origin of litigation privilege] had nothing to do with clients' freedom to consult privately and openly with their solicitors; rather, it was founded upon our adversary system of litigation by which counsel control fact-presentation before the Court and decide for themselves which evidence and by what manner of proof they will adduce facts to establish their claim or defence, without any obligation to make prior disclosure of the material acquired in preparation of the case . . .
>
> R.J. Sharpe, prior to his judicial appointment, published a thoughtful lecture on this subject, entitled "Claiming Privilege in the Discovery Process" in *Law in Transition: Evidence, L.S.U.C. Special Lectures* (Toronto: De Boo, 1984) at p. 163. He stated at pp. 164-65:
>
> > . . . [T]he rationale for solicitor-client privilege is very different from that which underlies litigation privilege. This difference merits close attention. The interest which underlies the protection accorded communications between a client and a solicitor from disclosure is the interest of all citizens to have full and ready access to legal advice …
> > Litigation privilege, on the other hand, is geared directly to the process of litigation . . . Its purpose is more particularly related to the needs of the adversarial trial process. Litigation privilege is based upon the need for a protected area to facilitate investigation and preparation of a case for trial by the adversarial advocate. In other words, litigation privilege aims to facilitate a process (namely, the adversary process), while solicitor-client privilege aims to protect a relationship (namely, the confidential relationship between a lawyer and a client).
>
> It can be seen from these excerpts . . . that there is nothing sacrosanct about this form of privilege. It is not rooted, as is solicitor-client privilege, in the necessity of confidentiality in a relationship. It is a practicable means of assuring counsel what Sharpe calls a "zone of privacy" and what is termed in the United States,

> protection of the solicitor's work product: see *Hickman v. Taylor*, 329 U.S. 495 (1946).

In *Ottawa-Carleton (Regional Municipality) v. Consumers' Gas Co.* (1990), 74 O.R. (2d) 637, the Divisional Court articulated the purpose of this privilege as follows:

> The adversarial system is based on the assumption that if each side presents its case in the strongest light the court will be best able to determine the truth. Counsel must be free to make the fullest investigation and research without risking disclosure of his opinions, strategies and conclusions to opposing counsel. The invasion of the privacy of counsel's trial preparation might well lead to counsel postponing research and other preparation until the eve of or during the trial, so as to avoid early disclosure of harmful information. This result would be counter-productive to the present goal that early and thorough investigation by counsel will encourage an early settlement of the case. Indeed, if counsel knows he must turn over to the other side the fruits of his work, he may be tempted to forgo conscientiously investigating his own case in the hope he will obtain disclosure of the research, investigations and thought processes compiled in the trial brief of opposing counsel. See Kevin M. Claremont, "Surveying Work Product" (1983), 68 Cornell L.R. 760, pp. 784-88.

These authorities support the proposition that litigation privilege is meant to protect the adversarial process by preventing counsel for a party from being compelled to prematurely produce documents to an opposing party or its counsel. It does not exist to protect the OCL from the individual it represents. Litigation privilege does not apply to any of the records withheld by the OCL, subject to my findings below under the heading "Records the OCL claims were not prepared for purpose of representing the appellant".

Records the OCL claims were not prepared for the purpose of representing the appellant

The OCL submits that while most of the records were prepared to represent the appellant in the various proceedings, some of them were prepared for other purposes.

The OCL claims that Records 3, 4 and 5 were prepared for the purpose of processing the appellant's access request under the *Act*. I agree that these records are confidential communications between a lawyer and client for the purpose of giving or receiving legal advice on a matter that is distinct from the appellant's litigation. Here, the OCL received legal advice on its obligations under the *Act* stemming from the access request. These records are, therefore, exempt under section 19 of the *Act*.

The OCL claims that Records 1652, 1655, 1656, 1676 and 1705 (withheld handwritten portions only) are "dealing with concerns expressed about counsel", and that Records 1708-1709, 1727-1728 and 1734-1735 relate to "providing advice to Minister". I accept that these records were not created in the ordinary course of litigation, and constitute confidential internal

communications among OCL staff for the purpose of giving or receiving legal advice. As such, they are exempt under the solicitor-client communication privilege aspect of section 19.

The OCL submits that Records 1183 and 2770-2771 are not related to the appellant's specified litigation matters and therefore are not responsive to her request. This fact is clear on the face of Record 1183, and I find therefore that they should be withheld.

The OCL submits that Records 1249-1250 relate both to the appellant's litigation and other litigation. I agree. Because the responsive information is so intertwined with the non-responsive information, it would not be reasonable to sever and disclose portions of this record. The Ministry properly withheld these records in full.

Certain identified records relate to "internal documents opening file", "receipt and processing of counsel's statement of account", "processing accounts of authors of reports", "consultant's resume" and "supervision of [named outside counsel] by in-house staff". Nevertheless, these records were prepared in the ordinary course of the OCL and its counsel representing the appellant in the litigation. For the reasons outlined above, neither solicitor-client communication privilege nor litigation privilege attaches to them.

The OCL argues that although Records 2535, 2561, 2563-2581, 2588-2590, 2591-2602 and 2618-2627 were prepared by the appellant's counsel in the course of representing her, they are handwritten notes and are exempt "under the principles set out . . . in *Aggio v. Rosenberg* [(1981), 24 C.P.C. 7 (Ont. Master)] and *Spencer v. Crowe* [(1986), 74 N.S.R. (2d) 9 (S.C.)]." These cases dealt with situations where a former client claimed ownership of files in the physical custody of the client's former solicitor. In both cases, the court ultimately determined whether ownership rights in the physical files vested in the client or the solicitor. These cases are not applicable here. Section 19 does not apply to the handwritten notes in Records 2535, 2561, 2563-2581, 2588-2590, 2591-2602 and 2618-2627.

Conclusion

Solicitor-client communication privilege under section 19 applies to the following records: 3, 4, 5, 1652, 1655, 1656, 1676, 1705 (withheld portions only), 1708-1709, 1727-1728 and 1734-1735. In addition, Records 1183, 2770-2771 and 1249-1250 were properly withheld, since they relate in whole or in part to other matters outside the scope of the appellant's request.

Section 19 does not apply to any of the remaining records withheld by the Ministry and they are not exempt under sections 49(a) and 19.

RIGHT OF ACCESS TO ONE=S OWN PERSONAL INFORMATION/ADVICE OR RECOMMENDATIONS

Introduction

As stated above, section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution, and section 49 provides a number of exceptions to this general right of access. I have already determined whether the records are exempt under section 49(a) in conjunction with section 19. I will now determine whether section 49(a) applies in conjunction with the "advice or recommendations" exemption at section 13 of the *Act*.

In Order 94, former Commissioner Sidney B. Linden commented on the purpose and scope of this exemption. He stated that it ". . . purports to protect the free-flow of advice and recommendations within the deliberative process of government decision-making and policy-making." Put another way, the purpose of the exemption is to ensure that:

> . . . persons employed in the public service are able to advise and make recommendations freely and frankly, and to preserve the head's ability to take actions and make decisions without unfair pressure [Orders 24, P-1363 and P-1690].

Representations

The OCL submits that the following records are exempt under section 13 in conjunction with section 49(a) (I have removed from this list records I found exempt under section 19 above, or those now disclosed to the appellant):

> Interoffice memoranda/notes/e-mails between in-house staff
> 546, 839
>
> Memoranda of miscellaneous phone conversations
> 534, 618-621, 711, 733, 734, 952, 1023, 1169-1170, 1609
>
> Memoranda of phone conversations between in-house staff and [named outside counsel] or his staff
> 45, 54, 478, 479, 528, 587-587a, 589, 611, 687, 705-706, 761, 882, 900, 987, 1002, 1050, 1051, 1077, 1598
>
> Letters to/from in-house staff to/from [named outside counsel]
> 27-28, 476-477, 495-496, 522-523, 552-553, 576-577, 595, 665-666, 869, 909-911, 1020-1022, 1055, 1245-1246, 1495-1498, 1520-1523, 1541-1545
>
> Memoranda to file/handwritten notes by in-house staff
> 529, 530-531, 742, 750-752, 1048

The OCL states:

> [These records] are exempt under section 13(1) in that they contain advice or recommendations of a public servant.
>
> The "public servants" include [named OCL in-house staff, including the Children's Lawyer, and outside counsel].
>
> The records for which this exemption have been claimed incorporate advice that passed from one public servant to another about the conduct of the case. They contain suggested courses of action about how the litigation should be conducted. For example, at pages 27 to 28, [named in-house counsel] advises [named outside counsel] about steps to take in the litigation. Page 529 consists of memoranda to file from [named in-house counsel] confirming the advice of [the Children's Lawyer]. Pages 1541 to 1545 consists of a letter from [named outside counsel] to [named in-house counsel] outlining the suggested course of action in the case.
>
> It has been held that recommendations in relation to a suggested course of action in civil litigation can be exempt under section 13(1): Order P-484. Section 13(1) has been held to apply to lawyers employed or retained by an institution; its applicability is therefore not limited to in-house staff: Order P-170.
>
> . . . [T]his type of advice or recommendations should not be disclosed, because it could inhibit the free flow of advice or recommendations between counsel in civil litigation or family cases involving children. Counsel involved in a case should be able to have candid discussions and communications, and deliberative options, without the possibility that other individuals will be able to gain access to the deliberative process involved in the conduct of a case.

The appellant submits:

> There is no doubt that in addition to the protections that are needed to protect solicitor and client privilege, the government requires a system where they can seek advice from civil servants secure in the knowledge that advice is confidential.
>
> This section clearly was intended to supplement the principle of solicitor and client privilege, and to make the same sorts of protections apply to those circumstances where either the person giving advice was not a lawyer, or where it was not clear that the person receiving the advice was the client. Thus it appears that even though a head is not the client, and therefore the person to whom the privilege belongs, it is the head that can make the determination as to whether advice or recommendations ought to be disclosed.

> It is submitted, however, that this section was never intended to override the protections granted by the principle of solicitor and client privilege. The basis of this privilege is that it belongs to the client to make a determination or not whether to release the information. As indicated above, that right belongs to [the appellant]. Any advice or recommendations that were given in this case were given only because . . . the Children's Lawyer was appointed as her legal representative and litigation guardian, and through these appointments they arranged for a solicitor and client relationship to be established between various lawyers and [the appellant]. It is [the appellant] that is protected by the solicitor and client privilege, and it is she who has the right to determine whether information ought to be disclosed. More particularly, it is she who should have the right to see information about her own file.

Analysis

In Order 94, former Commissioner Sidney B. Linden commented on the purpose and scope of this exemption. He stated that it "... purports to protect the free-flow of advice and recommendations within the deliberative process of government decision-making and policy-making." Put another way, the purpose of the exemption is to ensure that:

> . . . persons employed in the public service are able to advise and make recommendations freely and frankly, and to preserve the head's ability to take actions and make decisions without unfair pressure [Orders 24, P-1363 and P-1690].

In my view, this exemption is designed to protect communications only within the context of the government making decisions and formulating policy *as a government*, not in its specialized role as an advocate representing the private interests of an individual in proceedings before a court. Here, as explained above in detail under the solicitor-client privilege discussion, any advice being given, and any decisions being made, are for the benefit of the child, not the OCL as a government agency or the public at large.

It is true, as the OCL submits, that in Order P-484, section 13 has applied to recommendations made in the course of civil litigation. However, that case is clearly distinguishable, since the government itself was a party to civil litigation commenced by the requester in that case (among others). There, the government received advice in its role as a government and as a party to litigation in its own right. Here, by contrast, the government agency is not a party to the litigation and its rights and/or interests are not at stake. For similar reasons, this case is also distinguishable from Order P-170.

Therefore, although some of the records would, in fact, reveal advice or recommendations, section 13 does not apply in these unusual circumstances, since the rationale for the exemption is not present.

As in the case of section 19, my finding with respect to section 13 applies only to the extent that

the records in question were prepared in the ordinary course of the OCL representing the appellant in the litigation. Based on the submissions of the OCL, I found above that certain records were, in fact, prepared for other purposes or were otherwise not responsive to the request (Records 3, 4, 5, 1183, 1249-1250, 1652, 1655, 1656, 1676, 1705, 1708-1709, 1727-1728, 1734-1735, 2770-2771). Although any advice or recommendations contained in these records may have qualified for exemption under section 13, none of these records remain at issue under this exemption. Therefore, none of the records remaining at issue under section 13 qualifies for exemption.

RIGHT OF ACCESS TO ONE=S OWN PERSONAL INFORMATION/UNJUSTIFIED INVASION OF OTHER INDIVIDUALS= PRIVACY

Introduction

The OCL claims that the following records contain personal information of individuals other than the appellant, and that this information is exempt under section 49(b):

> *In-house File*
> Letters to/from in-house staff to/from [named outside counsel]
> 1624 (VISA#)
>
> *[Named outside counsel's file]*
> Memoranda of phone calls
> 2535, 2562, 2567, 2577, 2579, 2601a-2602, 2620, 2621, 2622, 2703
>
> Memoranda to file/handwritten notes prepared by [named outside counsel]
> 2596, 2601, 2609, 2612, 2647, 2659, 2661a, 2709
>
> Letters to from [named outside counsel] to/from other counsel
> 2770-2771
>
> Letters to/from [named outside counsel] to/from another agent of OCL
> 2893 (contains opinion)

Under section 49(b) of the *Act*, where a record contains the personal information of both the appellant and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information.

Where, however, the record only contains the personal information of other individuals, and the release of this information would constitute an unjustified invasion of the personal privacy of these individuals, section 21(1) of the *Act* prohibits an institution from releasing this information.

In both these situations, sections 21(2) and (3) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the

personal privacy of the individual to whom the information relates. Section 21(2) provides some criteria for the institution to consider in making this determination. Section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) refers to certain types of information the disclosure of which does not constitute an unjustified invasion of personal privacy. The Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in 21(2) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

The OCL submits:

> The records contain personal information (as defined in section 2(1)) of other individuals: Phone numbers, addresses, VISA numbers, employment and educational history…
>
> . . . . .
>
> There is a presumed unjustified invasion of personal privacy under section 21(3), in that the records consist of phone numbers (for example, at page 2535), addresses (for example, page 678), a VISA number, and several resumes (for example, at pages 1499 to 1508 and 1511 to 1516)…

The appellant submits:

> It is assumed that this section is being relied upon only to keep the information expressly referred to by the [OCL] – phone numbers, addresses, Visa numbers and resumes – away from [the appellant]. Since [the appellant's] only concern is to try to understand what happened in her litigation, there is no reason that she would need, or want, this information.

I accept that all of the records contain personal information of identifiable individuals other than the appellant. I will not conduct a detailed analysis of whether or not that personal information is exempt, since it appears that the appellant is content not to pursue this information. I also find that these records are not reasonably severable in the circumstances and, therefore, I will uphold the decision to withhold these records in full.

ORDER:

1. I uphold the Ministry's decision to withhold Records 3, 4, 5, 1183, 1249-1250, 1624, 1652, 1655, 1656, 1676, 1708-1709, 1727-1728, 1734-1735, 2535, 2562, 2567, 2577, 2579, 2596, 2601, 2601a-2602, 2609, 2612, 2620, 2621, 2622, 2647, 2659, 2661a, 2703, 2709, 2770-2771 in full, and portions of Record 1705,

2. I order the Ministry to disclose the remaining records at issue to the appellant no later than **May 3, 2002**.

3. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with copies of the material disclosed to the appellant in accordance with provision 2.

Original Signed By: April 19, 2002
David Goodis
Senior Adjudicator