

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

CHAPNIK, MacKENZIE AND SEDGWICK JJ.

B E T W E E N:)
)
CITY OF TORONTO ECONOMIC) *George Rust-D'Eye & Kimberly A. Mullin,*
DEVELOPMENT CORPORATION) for the Applicant
)
Applicant)
)
- and -)
)
)
INFORMATION AND PRIVACY) *David Goodis, for the Respondent,*
COMMISSIONER/ONTARIO, SHOWLINE) Information and Privacy
LIMITED AND CITY OF TORONTO) Commissioner/Ontario
)
Respondents) *Andrew M. Robinson & Megan Mackey,*
) for the Respondent, Showline Limited
)
)
) **HEARD:** September 26, 2006

Sedgwick, J., (MacKenzie, J., concurring):

Application:

[1] This is an application by City of Toronto Economic Development Corporation (TEDCO) for judicial review of the decision of the Respondent, Information and Privacy Commissioner/Ontario (IPC) dated September 20, 2005, Order MO-1966 (*City of Toronto*), determining that TEDCO is deemed to be part of the City of Toronto (City) by virtue of subsection 2(3) of the *Municipal Freedom of Information and Protection of Privacy Act (Act)*; and that TEDCO's records are in the custody or control of the City under subsection 4(1), for the purpose of making an access decision under Part I of the *Act* (Application Record, Tab 3). All parties agree that the standard of review of this decision is correctness: Re. *Walmsley & Attorney General of Ontario et al.* (1997), 34 O.R. (3d) 611, 617 (CA); *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, (2004), 73 O.R. (3d) 321 (CA).

TEDCO:

[2] TEDCO was incorporated under the *Ontario Business Corporations Act (OBCA)*, R.S.O. 1990, c. B-16, as am'd, with share capital, on March 24, 1986. Its incorporation by the City was specifically authorized under s. 9 of the *City of Toronto Act, 1985 (Toronto Act)*, S.O. 1986, Pr 22, a private act of the Ontario Legislature given the Royal Assent on December 18, 1985.

[3] At the time of the proceedings before the IPC, TEDCO had a board of eleven directors. They were appointed by the City under s. 3.05 of TEDCO's By-law No. 1, as amended by By-law No. 2, both duly enacted by TEDCO; and under the statutory authority of the *OBCA*. They were a representative board including six citizen members; the Mayor or his/her designate, the Chair and two Councillors of the City's Economic Development and Parks Committee; and the City's Commissioner of Economic Development, Culture and Tourism or his/her designate (*ex officio*). TEDCO has five officers appointed by its board of directors in accordance with s. 5.01 of TEDCO's By-law No. 1 and under the statutory authority of s. 133 of the *OBCA*. The current offices held are President/Chief Executive Officer; Vice-President, Development; Vice-President, Real Estate; Corporate Secretary/General Counsel; and Chief Financial Officer. None of the current officers is a member of the board of directors. Since the proceedings before the IPC, the number of directors on the board of directors has been increased in accordance with TEDCO's by-laws.

[4] TEDCO is incorporated under the *OBCA* for the following purposes set out in subsection 9(1) of the *Toronto Act* and in paragraph 5 of its Articles of Incorporation:

- (a) The provision, operation and improvement of sites, building and facilities for;
and
- (b) The making of grants or loans to any person upon such terms as may be agreed between the corporation and the person for the carrying on of promotional activities in relation to,

the establishment and carrying on of industries and of industrial operations and uses incidental thereto.

[5] The number of shares of TEDCO is restricted to one share. Its sole shareholder is the City. TEDCO is also subject to certain restrictions imposed under subsection 9(2) of the *Toronto Act* and its Articles of Incorporation. TEDCO shall carry on its business without purpose of gain for the City, its shareholder. The City shall not transfer its share to any other person. Any profit or other accretion to TEDCO shall be used in promoting its purposes. Nor may the directors declare dividends to its shareholder. Nor may the corporation borrow money except from the City. Nor may the corporation grant bonuses in aid of any manufacturing business or other industrial or commercial enterprise. (Certificate and Articles of Incorporation, IPC Record of Proceedings, pp. 209-214). TEDCO was incorporated as a private business corporation, although it has some of the attributes generally associated with a corporation without share capital, which are not germane to these proceedings. In any case, the *OBCA* is the source of its legal personality.

[6] TEDCO owns more than 400 acres of real property in the Toronto Port Lands. This property was transferred to TEDCO by the City after TEDCO was incorporated in 1986. The purpose of the land transfer was to enable TEDCO to pursue industrial development of the transferred property in various ways. The business of TEDCO includes both the management of existing properties and property development. In its business operations, TEDCO manages and pursues industrial development of its real property in the course of which it may buy, sell, lease and otherwise deal in its real property. Those dealing with TEDCO have a reasonable expectation of confidentiality in their business dealings with respect to those properties. The transactions of TEDCO are not subject to approval by the City or City Council. TEDCO is not an agent of the City or of City Council, exercising any of its business functions on behalf of a municipal corporation or government as, for example, a non-profit municipal housing corporation (see para. [15] below).

[7] Among its business activities, TEDCO puts out requests for proposals to develop and operate business projects on its properties in the Toronto Port Lands. The present proceedings before the IPC arose from one such Notice to Potential Proponents relating to a proposed Film/Media Complex for TEDCO, the “Mega Studio Project” [see para. [9] below].

Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56:

[8] The *Act* is a public act of the Ontario Legislature, which was first enacted on December 14, 1989. Its enactment followed the incorporation of TEDCO by almost four years. In section 1 of the *Act*, its purposes are stated as:

- (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
 - (i) information should be available to the public,
 - (ii) necessary exemptions from the right of access should be limited and specific, and
 - (iii) decisions on the disclosure of information should be reviewed independently of the institution controlling the information; and
- (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

When considering the scope of the interpretation provisions of the *Act* in a particular case, a tribunal is bound to weigh the competing interests of access to information and privacy. As the present case shows, that is not always an easy task. The burden of persuasion rests upon the party resisting disclosure, whether an individual or, in this case, a corporation, *Maislin Industries Ltd. v. Canada (Ministry for Industry, Trade and Commerce)*, [1984] 1 F.C. 939 (T.D.), approved by Roscoe, J.A.,

Re: McLaughlin and Halifax-Dartmouth Bridge Commission, (1993) 108 D.L.R. (4th) 506, 511 (N.S.C.A.). We are persuaded that in this case, TEDCO has met that burden.

Proceedings before the IPC:

[9] By its terms, therefore, the *Act* applies to “institutions” and to information under their control. “Institutions” are defined in s. 2 of the *Act* (see para. [10] below). In the proceedings under review, an adjudicator of the office of the IPC ruled that TEDCO was subject to the *Act* and ordered the City Council or the Clerk of the City to obtain from TEDCO all records in its custody or control which were responsive to the request of the Respondent Showline Limited (Showline) to TEDCO on or about May 20, 2004, for access to documents relating to the “Mega Studio Project” in the Toronto Port Lands. On or about June 1, 2004, Showline made the same request to the Respondent City. On or about September 7, 2004, Showline commenced a formal appeal to the IPC from the City’s response that TEDCO had advised the City that it was a share capital corporation incorporated under the *OBCA*, whose officers were not appointed by or under the authority of the City Council within the meaning of the *Act*. Therefore, TEDCO was not an institution to which the *Act* applied, and its records were not in the custody or control of the City, nor subject to the *Act*. This remains the position of TEDCO. In the proceedings before this court which resulted from the adjudicator’s ruling, the City was not represented.

Application of the Act to TEDCO: Subsections 2(1) and (3):

[10] The “institutions” to which the *Act* applies are defined in the interpretation section of the *Act*, as follows:

- (A) Under subsection 2(1), an “institution” means,
 - (a) a municipality,
 - (b) a school board, municipal service board, transit commission, public library board, board of health, police services board, conservation authority, district social services administration board, local services board, planning board, local roads board, police village or joint committee of management established under the *Municipal Act, 2001* or a predecessor of that Act,
 - (c) any agency, board, commission, corporation or other body designated as an institution in the regulations; (“institution”)
- (B) Subsection 2(3) includes a statutory definition of certain bodies “deemed” to be a part of the municipality for the purposes of the *Act*, and, therefore, subject to the *Act*. In its entirety, subsection 2(3) provides that,

Every agency, board, commission, corporation or other body not mentioned in clause (b) of the definition of “institution” in subsection (1) or designated under clause (c) of the definition of “institution” in subsection (1) is deemed to be a part of the municipality for the purposes of this Act if all of its members or officers are appointed or chosen by or under the authority of the council of the municipality.

[11] The issue before this court is presented as a matter of textual statutory interpretation. Is TEDCO subject to the *Act*, by reason of the wording of either of subsections 2(1) or (3) of the *Act*? We will examine the possible application of each subsection in turn.

Subsection 2(1):

[12] No part of the definition of an “institution” in subsection 2(1) of the *Act* applies to TEDCO. As to clause (a) of subsection (1), TEDCO is not a “municipality”. It is a corporation with share capital to which the *OBCA* applies. As to clause (b) of subsection (1), TEDCO is not an institution of any of the types “mentioned” in that clause. As to clause (c) of subsection (1) of the *Act*, TEDCO is not a corporation “designated” as an “institution” in the “regulations” under the *Act* (*O. Reg. 372/91, s. 1, as am’d*). The corporations so designated include certain community development corporations “incorporated under sections 109 of the *Municipal Act, 2001*. TEDCO is not incorporated under the *Municipal Act, 2001*. Nor is TEDCO a municipal business corporation incorporated under *O. Reg. 168/03* of the *Municipal Act, 2001*. TEDCO was not incorporated under *O. Reg. 168/03* (see para. [2] above). The adjudicator’s ruling that TEDCO was subject to the *Act* was not based on subsection 2(1) of the *Act*. We agree. TEDCO was incorporated under the *OBCA*.

Subsection 2(3):

[13] The adjudicator’s ruling that TEDCO was subject to the *Act* was based on subsection 2(3) of the *Act*. The submissions of the parties before us were directed mainly to the interpretation of subsection 2(3).

[14] The adjudicator found that the directors of TEDCO were appointed or chosen “by or under the authority of the council of the municipality” and that the directors of TEDCO fell within the meaning of the term “officers”, in the context of subsection 2(3) of the *Act*. Her finding that the term “officers” included “directors” was central to her decision.

[15] In support of her finding that the directors of TEDCO were “officers” in the context of subsection 2(3) of the *Act*, the adjudicator relied on another adjudicator’s decision, Order M-415 (*Township of Temagami*), [1994] O.I.P.C. No 363, who found that a non-profit municipal housing corporation was subject to the *Act* under subsection 2(3) on similar grounds. In an earlier decision, Order M-343 (*Renfrew Industrial Commission*), [1994] O.I.P.C. No. 218, the same adjudicator had found that an industrial commission incorporated under a predecessor statute to the *OBCA* as a corporation without share capital was not subject to the *Act* under subsection 2(3), because neither its “members” nor its “officers” were appointed or chosen by or under the authority of the Town

Council. In that ruling, the adjudicator made no finding that the “directors” were “officers” for purposes of considering the possible application of subsections 2(3). This earlier ruling was not addressed by the adjudicator in the TEDCO ruling. No explanation was given. The ruling in *Renfrew Industrial Commission* is persuasive. Ontario corporations were involved in both cases, in *Renfrew*, a corporation without share capital; in TEDCO, a corporation with share capital, a distinction that is not germane to the issues before us (see para. [5] above). There is an affinity between the purposes of the two corporations. The same statutory language was under consideration in both cases, the “officers” being appointed by the “directors” of the corporation.

[16] In making her ruling that the directors of TEDCO were “officers” under subsection 2(3) of the *Act*, the adjudicator also relied on an extended definition of “officer” in the U.K. *Companies Act 1985*; and on Ontario case law in the context of the examination for discovery of corporate “officers”, including “directors”, on behalf of corporations. With respect, the case law relating to the examination of “directors” as “officers” of a corporation and the importation of a foreign statutory definition without explanation of its relevance to TEDCO’s circumstances, do not support the conclusion drawn by the adjudicator from them. More significantly, she omitted any reference in her ruling to the pertinent definitions of “officer” and “director” in the *OBCA* under which TEDCO was incorporated and to which TEDCO remains subject. In the *OBCA*, the terms “officer” and “director” are separately and differently defined. An “officer” does not include a “director” in the constating statute that gives TEDCO its legal personality.

[17] In our view, “directors” are not “officers” of a corporation in the context of subsection 2(3) of the *Act*. In fact, none of the “officers” of TEDCO is a director (see para. [3] above). The purpose of subsection 2(3) is to define and set the limits for corporations and other legal entities so that they may determine whether they are subject to statutory obligations under the *Act*. Clarity of meaning is important in such provisions. One of the accepted canons of statutory interpretation is that the Legislature intends to use language in a coherent and consistent manner. This is sometimes referred to as the presumption of consistent expression: *Sullivan and Driedger on the Construction of Statutes (4th Ed.)*, p. 162. The cardinal rule of statutory interpretations is that a statute should be construed according to the intention expressed in the statute itself. “If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. The words themselves do in such a case best declare the intention of the lawgiver”. *Sussex Peerage Claims*, (1844) 8 E.R. 1034. As pointed out, the *Act* was enacted almost four years after TEDCO was incorporated (see para. [8] above). Corporations such as TEDCO are considered as being within the purview of the draftsman of the *Act*. With reference to TEDCO, the statutory definitions in the *OBCA* of “officer” and “director” should, in our view, be applied in determining the application of the *Act* to the corporation. The terms director and officer are not ambiguous and have distinct meanings in general corporate law and in the *OBCA*. Directors and officers have separate attributes and functions in a corporation. Had the Legislature intended to extend the meaning of “officers” to include “directors” in subsection 2(3) of the *Act*, it could have done so by simply adding the words “or directors”. In the context of subsection 2(3) of the *Act*, we do not accept the extended and artificial construction of “officers” as including “directors”. The word “officers” is used in its plain and ordinary meaning in relation to corporations.

[18] In her ruling, the adjudicator uses the expression “directing or controlling minds” when referring to the directors as officers of TEDCO. She uses the expression to support her conclusion that the directors of TEDCO are officers in the context of subsection 2(3) of the *Act*. The phrase has no settled legal meaning. In the context of the adjudication before the IPC, the phrase appears to have been drawn from the earlier ruling by the adjudicator in *Township of Temagami*. The adjudicator in the proceeding before us assumed that the members of the board of directors of TEDCO are its “directing or controlling minds”. In any particular instance, the identity of the “directing or controlling minds” of a corporation is a question of fact. There was no analysis of any evidence before the adjudicator or before this court as to the identity of the “directing or controlling mind(s)” of TEDCO. Sometimes the directors of a corporation are, in fact, its controllers; other times, its officers are. With respect, the adjudicator’s finding that the directors were the “directing or controlling minds” of TEDCO is based on an assumption, not on evidence. The expression “directing or controlling minds” is not a term used or defined in the *Act* or in related case law. No statutory or judicial authority was drawn to our attention for the use of this term in the context of determining whether the *Act* applies to a particular corporation. In our view, it is an unwarranted gloss on the words actually used in subsection 2(3) of the *Act*, which does not assist us in interpreting them.

[19] Having determined that the directors of TEDCO were “officers” under subsection 2(3) of the *Act*, the adjudicator found that TEDCO was subject to the *Act* as a corporation “deemed to be a part of the municipality (the City) for the purposes of this Act” because, in the words of subsection 2(3) of the *Act*, all of its “members” or “officers” are appointed “by or under the authority” of the City Council. As to corporations, the term “member” applies only to a corporation without share capital. “Member” does not apply to TEDCO because it is a corporation with share capital. Under its constating articles of incorporation and its by-laws, the directors of TEDCO appoint its “officers” in accordance with section 133 of the OCBA. They are not appointed by the City Council. There was no analysis of any evidence before the adjudicator or before this court as to whether the City Council had exercised any actual “authority” in that regard. There is no evidence that the City Council has ever purported to do so. We were directed to no statutory or judicial authority giving City Council the authority to do so. There is no evidence to support the adjudicator’s decision that the officers of TEDCO are appointed or chosen by or under the authority of the City Council. They were and are appointed by the board of directors of TEDCO under the authority conferred on them by its constating documents and the statutory provisions of the OCBA.

[20] Does the phrase used in subsection 2(3) of the *Act*, “under the authority of the council of the municipality” extend the meaning of the subsection 2(3) sufficiently to bring TEDCO within its scope”? We think not. In *Kelvin Energy Ltd. v. Lee*, [1992] 3 S.C.R. 235, 252-254, the Supreme Court of Canada considered the meaning of the phrase “under this *Act*” in relation to section 249 of the *Canada Business Corporations Act* which provides that an appeal lay from any order made under that *Act* (emphasis added). The Court construed that statutory provision as restricted to orders made “pursuant to a power specifically conferred by the *Act*” (emphasis added). By analogy to this case, for the officers of TEDCO to be considered to have been appointed or chosen “under the authority” of City Council under subsection 2(3) of the *Act*, the power to appoint or choose “officers” of TEDCO would have to be specifically conferred upon the City Council. Under the governing statute of TEDCO, however, that power is specifically conferred on its board of directors in accordance with section 133 of the *OCBA*.

Conclusion:

[21] We conclude that the adjudicator erred in law in finding that TEDCO was deemed to be a part of the City under subsection 2(3) of the *Act* for the purposes of the *Act* and in finding that TEDCO's records were, therefore, in the custody or control of the City under subsection 4(1) of the *Act*.

Relief granted:

[22] Accordingly, the applicant TEDCO is entitled to the relief sought in subparagraphs (a) and (b) of paragraph 1 of its Amended Notice of Application for Judicial Review, dated October 26, 2005. An order will issue in the nature of certiorari quashing or setting aside the decision and Order MO-1966 (*City of Toronto*) of the respondent Information and Privacy Commissioner/Ontario, dated September 20, 2005; and declaring that the Applicant, City of Toronto Economic Development Corporation, is not subject to the *Municipal Freedom of Information and Protection of Privacy Act*. In the circumstances, we see no reason to remit the matter to the IPC, as requested (IPC Factum, para. 55).

Costs:

[23] If the parties are unable to agree on costs issues, they may address brief written submissions to the Court (not to exceed four pages, exclusive of supporting materials), within thirty days after these reasons are released.

SEDGWICK J.
I agree. — MacKENZIE J.

Released: November 17, 2006

CHAPNIK J. (Dissenting):

[24] This case turns on the interpretation and application of s. 2(3) of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). That section reads:

2(3). Every agency, board, commission, corporation or other body not mentioned in clause (b) of the definition of “institution” in subsection (1) or designated under clause (c) of the definition of “institution” in subsection (1) *is deemed to be a part of the municipality for the purposes of this Act if all of its members or officers are appointed or chosen by or under the authority of the council of the municipality.* (emphasis added)

[25] In a decision rendered September 20, 2005, the Information and Privacy Commissioner for Ontario (IPC) found that the City of Toronto Economic Development Corporation (TEDCO) is deemed to be “a part of” the City of Toronto for the purpose of the *Act*. Thus, any records held by TEDCO are within the custody and control of the City pursuant to s. 4(1) of the *Act*. The adjudicator, therefore, made an order for access to TEDCO’s records; that is, she ordered the City to secure the records from TEDCO and to make an access decision regarding those records, under the *Act*. TEDCO seeks an order quashing the IPC’s decision.

STANDARD OF REVIEW

[26] Both parties agree that the standard of review is correctness. The Court of Appeal has held that s. 4 of the *Act*, dealing with the right to access, is a jurisdiction limiting provision that does not require specialized expertise to interpret; and therefore, attracts a standard of review of correctness. *Walmsley v. Ontario (AG)* (1997), 34 O.R. (3d) 611 (C.A.). See also, *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)* (2004), 73 O.R. (3d) 321 (C.A.).

[27] Likewise, the issue before this Court, which requires an interpretation of s. 2 of the *Act*, is a pure question of law that is not at the core of the IPC’s area of expertise. Accordingly, the standard of review is, indeed, correctness.

ANALYSIS

[28] The IPC found that TEDCO was not an “institution” within the meaning of s. 2(1) of the *Act*. Its decision that TEDCO is, nevertheless, part of the City within the meaning of s. 2(3) of the *Act* is rooted in the fact that members of TEDCO’s Board of Directors are appointed by the City. The adjudicator specifically concluded that TEDCO’s directors fall with the term “officers” in section 2(3).

[29] The applicant, TEDCO, argues that the adjudicator erred in her interpretation of “officers” and in finding the officers of TEDCO are “appointed or chosen by or under the authority of” the City.

Moreover, according to the applicant, the decision is inconsistent with the purpose of the *Act* and the status of TEDCO as a business corporation.

[30] I have read the decision of my colleagues in the majority who came to the conclusion that the adjudicator erred in reaching the decision she did since “directors” and “officers” have separate attributes and functions in a corporation; there is no evidence as to the identity of any directing minds of TEDCO; and the officers of TEDCO were and are appointed under the authority of the incorporating documents of TEDCO and pursuant to the statutory provisions of the *Business Corporations Act*, R.S.O. 1990, c. B.16, s. 133 (the *OBCA*).

[31] With the greatest of respect to my learned colleagues, I disagree. Although there is clearly a difference between “directors” and “officers” under the *OBCA*, that alone is not determinative of the issue. In my view, the issue is much broader in scope, and involves the interpretation of s. 2(3) of the *Act* in its entirety and in the context of the *Act* as a whole.

[32] In finding that directors were encompassed within the term officers in s. 2(3) of the *Act*, the adjudicator relied in part upon a similar finding by another adjudicator in *Re Township of Temagami*, Order M-415, appeal M-9300577 (November 2, 1994) when she stated the following:

“In my view, the use of the term “officers” along with “members” in section 2(3) is intended to identify the principal directing or controlling minds of a wide variety of entities, including “every agency, board, commission, corporation or other body not mentioned in subsection 2(1)(b)”. A purposive interpretation of the *Act* suggests that the term “officers” should encompass the controlling or directing minds of a non-profit corporation, namely its board of directors, whether or not directors are otherwise described as “officers” in the corporate documents.

In my opinion, to interpret the term “officers” narrowly to include those positions commonly referred to as officers in a business law context, such as president, secretary, treasurer, would be inconsistent with the purpose of section 2(3).”

[33] I agree with this reasoning, particularly in light of the general principles articulated in *Re McLaughlin and Halifax-Dartmouth Bridge Commission* (1993), 108 D.L.R. (4th) 506 (N.S.C.A.), and other cases, respecting the interpretation of similar legislation: that the statute be given “a large and liberal interpretation;” that it is designed to provide a right of access to information in order to ensure governing bodies are fully accountable; and that, in general, disclosure should be favoured over non-disclosure.

[34] The purpose of the *Act* as enunciated in s. 2(1), as well as its history and background, are adequately set out in the reasons of the majority and I will not repeat them. In general terms, the purpose of the *Act* is to provide citizens with a right of access to information and records held by government and other bodies exercising public functions. Not only is the order for access consistent with the purposes of the *Act*, but it is also consistent with the stated purpose of TEDCO, which is, in general terms, to create and retain employment and complement the City of Toronto’s Economic Development Policy. Clearly, TEDCO is not simply a business corporation that “owns land, deals

with and disposes of land and pursues industrial development.” Its very name, being the City of Toronto Economic Development Corporation (TEDCO), underscores its public function. Moreover, its corporate structure lends further credence to this view: the City is TEDCO’s owner and sole shareholder, and the corporation is restricted in important ways; (for example, it cannot borrow funds other than from the City).

[35] The majority found no evidence suggesting that the directors were the “directing or controlling minds” of the corporation. However, s. 7 of TEDCO’s incorporating By-Law No. 1 states that the directors

“may exercise all such powers and do all such acts and things as may be exercised or done by the corporation and are not by the by-laws or any special resolution of the corporation or by statute expressly directed or required to be done by the corporation at a general meeting of members.”

[36] In my view, it is not necessary to define “officers” in this context strictly in terms of the *OBCA*. The fact that in her decision, the adjudicator did not specifically refer to that legislation, does not detract from the validity of her findings.

[37] Section 2(3) of the *Act* speaks of “members” or “officers” who are “appointed or chosen by” or “under the authority of” the council or municipality. This wording underlines the broad approach intended by the legislature.

[38] Moreover, as noted in the arbitrator’s decision, there is Ontario case law supporting the proposition that the term “officer” has been interpreted to include “director” in various contexts. See, for example, *Hamilton Harbour Commissioners v. J.P. Porter Co. Ltd. et al.* (1978), 19 O.R. (2d) 66 (H.C.J.); and *Bazos v. Bazos*, [1965] O.J. No. 326 (H.C.J.). The adjudicator found additional authority to support a broad reading of the word “officer” in s. 2(3) in corporate legislation in the United Kingdom, Ontario case law, the *Rules of Civil Procedure*, and the French/English dictionary. A contextual reading of the entire *Act* led the adjudicator to apply those principles in ascertaining the intention of Parliament.

[39] TEDCO implements part of the City’s economic development policy. It is strategically aligned with the City’s Economic Development Department. Its stated purpose is “to work closely with its shareholder, the City of Toronto and strategic partners to ... pursue business and redevelopment opportunities.” It helps to create and retain employment with the City “while ensuring that its efforts are complementary to the City’s overall economic development strategy.”

[40] Interestingly, TEDCO itself contemplated being subject to the provisions of the *Act* when it stated in its Request for Proposals for the Port Lands project that such proposals and other documentation and information may be treated and subject to release in accordance with the provisions of the *Act*.

[41] City Council appoints all of the directors of TEDCO who, in turn, appoint the officers. One might reasonably interpret this to mean that officers are appointed by the directors under the

authority conferred upon the directors by the City. In my view, there is no logical reason to differentiate between officers and directors in this context. To do so focuses on an individual's title rather than his or her role within the corporation, and fails to measure the connection or proximity between the municipality and the corporation. A somewhat analogous situation was raised in *British Columbia Development Corp. v. British Columbia (Ombudsman)* [1984] 2 S.C.R. 447 in which the British Columbia Court of Appeal and the Supreme Court of Canada held that a subsidiary company which was not itself an "authority", but was the subsidiary of an "authority" came within the jurisdiction of the Ombudsman.

[42] TEDCO contends it will be unable to generate industrial development if subject to the *Act*. However, the *Act* contains a broad range of exemptions that protect the business and economic interests of the institutions within its purview. The business aspects of TEDCO's mandate are important, but in carrying out that mandate, its proximity to the City is compelling; and this proximity, in my view, brings it within the auspices of the *Act* and its stated purposes of transparency and accountability.

[43] Finally, as stated in the majority decision, TEDCO's incorporation by the City was specifically authorized under the *City of Toronto Act, 1985*. Section 109 of the *Municipal Act, 2001* permits the council of a municipality to incorporate a community development corporation under Part III of the *Corporations Act*, and such a corporation is specifically designated under s. 109(10) as a class of institution to which the *Act* applies. As well, Ontario Regulation 168/03 made under the *Municipal Act, 2001*, permits a municipality to incorporate corporations under the *OBCA* or under Part III of the *Corporations Act* for designated purposes, including advancing the municipality's economic goals and objectives.

[44] It appears to me to be unlikely that the legislature would choose to make corporations incorporated by municipalities under the *Municipal Act, 2001* and its regulations, whether incorporated under the *Corporations Act* or the *OBCA*, subject to the provisions of the *Act* whereas a similar corporation authorized to be incorporated under the *City of Toronto Act, 1985* would not be subject to its provisions.

CONCLUSION

[45] I agree with the IPC that an interpretation of s. 2(3) in its entirety and within the context of the *Act* as a whole, leads to the conclusion that the legislature intended to include directors within the purview of the term "officers" in s. 2(3) of the *Act*. TEDCO, therefore, becomes subject to the *Act* because all of its officers are appointed by or under the authority of City Council.

[46] In my view, the adjudicator was correct in taking a purposive approach to the *Act*.

[47] There was no error of fact or law in the decision of the adjudicator. She correctly held, as a matter of statutory interpretation, that TEDCO is deemed to be "a part of" the City, pursuant to and within the meaning of s. 2(3) of the *Act*.

[48] For the above reasons, I would dismiss TEDCO's application with costs, and order that TEDCO make an access decision under Part I of the *Act* within 14 days of the release of these reasons.

CHAPNIK J.

Released: November 17, 2006

COURT FILE NO.: 412/05

DATE: 20061117

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

CHAPNIK, MacKENZIE AND SEDGWICK JJ.

B E T W E E N:

CITY OF TORONTO ECONOMIC
DEVELOPMENT CORPORATION

Applicant

- and -

INFORMATION AND PRIVACY
COMMISSIONER/ONTARIO, SHOWLINE
LIMITED AND CITY OF TORONTO

Respondents

REASONS FOR JUDGMENT

CHAPNIK, MacKENZIE AND SEDGWICK JJ.

Released: November 17, 2006