Federal Court Cour fédérale

Date: 20220726

Docket: T-1325-20

Citation: 2022 FC 1115

Ottawa, Ontario, July 26, 2022

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

A INC. AND B INC.

Applicants

and

CANADIAN MUSEUM FOR HUMAN RIGHTS AND THE CANADIAN BROADCASTING CORPORATION

Respondents

PUBLIC JUDGMENT AND REASONS

[1] The Applicants, A Inc. and B Inc., seek judicial review of the decision of the Respondent, the Canadian Museum of Human Rights [CMHR or the Museum] to release certain records in response to two access to information requests, one of which was made by a journalist of the Respondent, the Canadian Broadcasting Corporation [CBC]. The CMHR considered the submissions of the Applicants and the provisions of the *Access to Information Act*, RSC 1985, c A-1 [the Act] and decided to release the requested records with redactions. The Applicants argue

that the records should not be disclosed at all, even with redactions, as they are subject to exceptions from disclosure pursuant to subsection 19(1) and paragraphs 20(1)(c) and (d) of the Act.

[2] On December 22, 2020, the Case Management Judge granted the Applicants' request to pursue their Application for Judicial Review [the Application] anonymously, given that the question of whether the Applicants' names are protected from disclosure is an issue to be decided in the Application.

[3] On January 8, 2021, the Case Management Judge issued a Confidentiality Order designating certain information to be filed and treated as confidential, specifically, the unredacted records subject to this Application, as well as the names, addresses, phone numbers, domain names, and any other identifying information of the Applicants.

[4] Also on January 8, 2021, the Case Management Judge issued a Protective Order, on consent of the Applicants and the CMHR. The Protective Order governs the production and disclosure of "confidential" information and "solicitors' eyes only" information.

[5] The CBC was added as a Respondent on February 8, 2021.

[6] For the reasons that follow, the Application is dismissed, as is the Applicants' motion to remove a document from the Certified Tribunal Record [CTR]. The Court finds that some

redactions are required pursuant to subsection 19(1) of the Act and that this information can be severed to permit release of the records.

I. **Preliminary Issue: The Applicants' Motion**

[7] At the outset of the hearing of this Application, the Court considered the Applicant's Motion to remove a document from the CTR. This document is a letter, dated October 13, 2020, setting out the written submissions of the Applicants to the CMHR in accordance with section 28 of the Act, following receipt of notice pursuant to section 27 that the CMHR intended to disclose records pertaining to the Applicants. The submissions describe the Applicants' opposition to the release of the records.

[8] The CTR was served on the Applicants and filed with the Court on January 29, 2021. The Applicants filed their Application Record, which included the October 13, 2020 letter, on May 31, 2021. On June 14, 2021, Counsel for the Applicants raised concerns about the contents of the public and confidential versions of the CTR. The Case Management Judge directed that the Applicants' intended motion to remove any documents they considered had been improperly included in the CTR should be heard at the time of the hearing of the Application, and established a timetable for the exchange of motion records.

[9] The Applicants characterize the purpose of their motion as to "correct" the CTR. The Applicants argue that their submissions to the CMHR constitute a brief of legal argument that should not form part of the tribunal record, relying on *Regina (City) v ATU, Local 588*, 1975 CarswellSask 78 at paras 15–16, 61 DLR (3d) 376 (Sask QB), aff'd (1976) 67 DLR (3d) 533

(Sask CA), and *Newfoundland and Labrador (Resource Development Trades Council) v Muskrat Falls Employers' Association Inc,* 2018 NLSC 260 at paras 13–14. The Applicants argue that the submissions are neither evidence nor pleadings and are unnecessary to the determination of the Application and should, therefore, be excluded from the CTR. The Applicants submit that the evidence is only that set out in an affidavit that describes the impact of disclosure of the records at issue.

[10] The Applicants contend that the content of the record for the purpose of judicial review is not addressed in Rules 317 or 318 of the *Federal Courts Rules*, SOR/98-106, or in the *Access to Information Act*, or the *Privacy Act*, RSC 1985, c P-21.

[11] The CMHR and CBC oppose the Applicants' motion.

[12] The CMHR notes that Rule 317(1) of the *Federal Courts Rules*, which provides that an applicant may request material in the possession of the tribunal whose decision is under review, contemplates material that is "relevant to an application." The CMHR argues that documents which were before the decision-maker are relevant to an application for judicial review and form part of the record on judicial review, even for a *de novo* determination. The CMHR submits that the CTR, which includes the evidence that was considered by the CMHR in determining whether to disclose the records, is required by the Court to determine whether the CMHR correctly applied the exemptions to disclosure. The CMHR notes that the Federal Court has considered the submissions of third parties pursuant to paragraph 28(1)(b) of the Act as part of the CTR in other access to information proceedings: see for instance *Suncor Energy Inc v Canada-Newfoundland*

and Labrador Offshore Petroleum Board, 2021 FC 138 at paras 18–28; *Porter Airlines Inc v Canada (Attorney General)*, 2013 FC 780 at para 5; *Concord Premium Meats Ltd v Canada (Food Inspection Agency)*, 2020 FC 1166 at para 14 [*Concord*].

[13] The CMHR adds that the Applicants acquiesced to the inclusion of the submissions in the CTR by failing to object in a timely manner and by their own inclusion of the submissions in their Application Record. The CMHR relied on the CTR—including the submissions—when considering whether to file further affidavit evidence; removing the document now would be inequitable and prejudicial.

[14] The CBC agrees with the CMHR and adds that no authority has been cited for the ability to remove a document from a CTR. Even irrelevant documents remain in a CTR. The CBC adds that to remove the document would be inconsistent with the open court principle, which applies to all documents made available to the Court for the purpose of deciding the case. CBC submits that the Applicants' motion is subject to the test for discretionary limits on court openness, as recently expressed by the Supreme Court in *Sherman Estate v Donovan*, 2021 SCC 25 at para 38 [*Sherman Estate*].

[15] I find that there is no basis in law or any reason at all advanced by the Applicants for the removal of their submissions to the CMHR from the CTR. The Applicants did not point to any jurisprudence in this Court to support their assertion that submissions with legal arguments made to the decision-maker should not be part of a CTR. It is typical in applications for judicial review for the CTR to include submissions to the decision-maker that argue both the facts and the law.

[16] The two cases cited by the Applicants are of no assistance to them as both deal with labour arbitration disputes, which arise in a distinct statutory context. I note that the more recent decision of the Newfoundland Supreme Court addressed the issue of whether the record should be expanded to include the briefs submitted to the labour arbitrator—not whether documents on the record should be removed.

[17] The Applicants' argument that their submissions to the CMHR were not evidence or pleadings and that this Court will make its own determination overlooks that the record before the initial decision-maker is relevant, even on a *de novo* review. As noted in *Concord* at para 33, as described further below, although the review is referred to as *de novo*, this does not mean that the Court does not consider the information before the decision-maker in determining the correctness of the decision. In this case, the Applicants provided their submission to the CMHR with little else. On a *de novo* review, additional evidence may be submitted, but the evidence on the record remains relevant. As noted by the CMHR, the removal of the Applicants' submissions from the record would suggest that the CMHR did not receive any response from the Applicants, despite providing the opportunity to do so, as required by the Act, and that the CMHR reached its determination on disclosure without any input.

[18] The jurisprudence supports the conclusion that the CTR—even for an application for judicial review where the Court conducts a *de novo* review—includes the material that was before the initial decision-maker: see for example *Canada (Citizenship and Immigration) v Hanjra*, 2018 FC 207 at paras 17–20, albeit in a different context, where the Court noted that any

document that was before a decision-maker when it made its decision is presumed relevant when that decision is under review. The Court noted at para 20:

> My conclusion on this issue is not altered by the fact that the process before the IAD is a *de novo* appeal, rather than a judicial review. The significance of this process is that both parties can introduce additional evidence to supplement the record that was before the Officer. However, this does not alter the presumption that the record that was before the Officer is relevant.

[19] In *Maax Bath Inc v Almag Aluminum Inc*, 2009 FCA 204 at para 9, the Court of Appeal stated:

> The relevant documents for the purposes of Rules 317-318 are those documents that may have affected the decision of the Tribunal or that may affect the decision that this Court will make on the application for judicial review (*Telus, supra* at paragraph 5; *Pathak, supra* at paragraph 10).

[20] As noted by the CBC, removal of the submissions from the CTR would offend the open court principle. In *Sherman Estate* at para 38, the Supreme Court of Canada recast the test for discretionary limits on the open court principle. The Court explained that this test applies to all discretionary limits including publication bans, sealing orders and redactions. The person seeking an exception to the open court principle—in this case, the Applicants—must establish that: (1) court openness poses a serious risk to an important public interest; (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.

[21] The Applicants have not established any elements of this test. Their position is simply that the inclusion of the submissions in the record is not necessary. I agree with the CBC that the public is entitled to know what the CMHR considered in deciding to provide the documents with redactions, as is this Court.

[22] The Applicants appear to wish to renege from their submissions, either in whole or in part, yet their arguments on this Application raise the same or similar arguments to those advanced in their submissions to the CMHR. In addition to the lack of a legal or other basis to remove the submissions from the CTR, the removal of the submissions would not disassociate the Applicants from the arguments made to the CMHR.

[23] The Applicants' motion is therefore dismissed.

II. **The Background**

[24] The CMHR is a Crown corporation. Its purpose is to "explore the subject of human rights, with special but not exclusive reference to Canada, in order to enhance the public's understanding of human rights, to promote respect for others and to encourage reflection and dialogue" (*Museums Act*, SC 1990, c 3, s 15.2).

[25] In 2020, news media reported that the CMHR had agreed to requests by groups touring the exhibits to conceal or avoid content relating to the human rights struggles of the LGBTQ+ community.

[26] On June 18, 2020, an access to information request was submitted seeking "all documents (emails, memos, letters, etc.) internal and external regarding discussions regarding the Museum having to either block or skip or in any way not show LGBT/same sex displays to any type of group that has visited." The request covered all such records dated January 1, 2018 onward.

[27] On June 21, 2020, a CBC journalist requested, among other documents, "all records regarding the exclusion of same-sex content during tours in the museum that are in the possession of CMHR manager Alain Bouchard or mention him. Include emails and any policy documents Mr. Bouchard wrote about this practice or materials that provided direction to staff."

[28] Among the records the Museum identified as responsive to the requests were documents pertaining to A Inc. and B Inc., which are two private schools operated by the same Corporation. One of the schools at issue is in Canada and the other in the United States.

[29] The record pertaining to A Inc. consists of one email in chart form containing the booking information for a self-guided tour of the Museum. The record appears to list, among other information, the name of the school, the name and email of a staff member of the school, the grade levels of the students who would be attending, and a note relating to the request not to show certain content.

[30] The record pertaining to B Inc. consists of an initial request to book a tour and several subsequent email exchanges. The booking request identifies the school, its location and phone

number, the name and email address of the staff member who made the request, and the grade levels of the students who would be attending. The request also notes the special request to not show certain content. The subsequent correspondence includes emails with the staff member and between employees of the Museum. The emails disclose the name, contact information, and position of the staff member.

[31] In accordance with subsection 27(1) of the Act, the CMHR wrote to the Applicants on August 12, 2020, with subsequent reminders, to invite submissions regarding the potential disclosure of the records.

[32] Counsel for the Applicants responded on their behalf on October 13, 2020, by joint letter objecting to the disclosure of the records and citing exceptions to disclosure pursuant to subsection 19(1) and paragraphs 20(1)(c) and (d) of the Act. The Applicants cite the same exceptions to disclosure on this Application.

III. **The CMHR's Decision to Release Redacted Records**

[33] On October 23, 2020, the CMHR informed each of the Applicants that it had decided to release the records, with redactions. The CMHR determined that certain portions of the records contained personal information and were exempt from disclosure pursuant to subsection 19(1), but could be severed, in accordance with section 25 of the Act.

[34] The CMHR determined that the records were not exempt from disclosure under either paragraph 20(1)(c) or paragraph 20(1)(d), because the Applicants had not demonstrated to the

satisfaction of the CMHR that disclosure would result in a risk of harm beyond the merely speculative or possible, nor that there was a reasonable expectation of interference with actual contractual or other negotiations.

[35] The CMHR attached the copies of the records that it proposed to release, noting the subsection 19(1) redactions that concealed the names and contact information of the staff members and the grade levels of the students as noted in the request from the schools regarding the proposed attendees.

IV. **The Issue and the Standard of Review**

[36] Section 44 of the Act provides that a third party (in this case, the Applicants) may apply to this Court for a "review" of a decision whether to disclose a record. Section 44.1 provides that an application under section 41 or 44 is "to be heard and determined as a new proceeding."

[37] The Court's review is described as a *de novo* proceeding to determine whether the records should be disclosed: *Merck Frosst Canada Ltd v Canada (Health)*, 2012 SCC 3 at para 53 [*Merck Frosst*]; *Canada (Office of the Information Commissioner) v Calian Ltd*, 2017 FCA 135 at para 28 [*Calian*]; *Concord* at paras 33, 35. New evidence may be filed before the Court, and little or no deference is owed to the government institution's decision: *Concord* at para 33, citing *Les Viandes du Breton Inc v Canada (Canadian Food Inspection Agency)*, 2006 FC 335 at paras 30–31, aff'd 2007 FCA 341.

[38] In *Concord*, the Court concluded that the SCC's decision in *Vavilov* did not change the approach to the Court's review pursuant to section 44 (see *Concord* at paras 36–43) and found

that the approach established in *Merck Frosst* continues to apply, which calls for the Court to examine the evidence submitted by the parties to determine whether the decision regarding the disclosure of the records is correct.

[39] In *Merck Frosst* at para 53, the Supreme Court of Canada stated:

> Under s. 51 of the Act, the judge on review is to determine whether "the head of a government institution is required to refuse to disclose a record" and, if so, the judge must order the head not to disclose it. It follows that when a third party, such as Merck in this case, requests a "review" under s. 44 of the Act by the Federal Court of a decision by a head of a government institution to disclose all or part of a record, the Federal Court judge is to determine whether the institutional head has correctly applied the exemptions to the records in issue. This review has sometimes been referred to as [a] *de novo* assessment of whether the record is exempt from disclosure. The term "*de novo*" may not, strictly speaking, be apt; there is, however, no disagreement in the cases that the role of the judge on review in these types of cases is to determine whether the exemptions have been applied correctly to the contested records. Sections 44, 46 and 51 are the most relevant statutory provisions governing this review.
>
> [Emphasis added; references omitted.]

[40] In *Concord*, at para 33, the Court explained why the section 44 review has been described as a "hybrid":

> The summary proceeding under section 44 has been described as a "hybrid" because it proceeds by way of application and involves a review of a decision that is, in some respects, similar to a traditional judicial review. However, it is also a type of *de novo* hearing because new evidence can be filed in the court, little or no deference is owed the government institution's decision-maker, and the court is required to decide whether records should be disclosed in the form proposed by the government institution (*Les viandes du Breton Inc v Canada (Canadian Food Inspection Agency)*, 2006 FC 335 at paras 30-31.

[41] The issue for the Court in this Application is whether the records requested should be released with the redactions proposed by the Museum or with more or fewer redactions. This entails consideration of whether any of the exceptions to disclosure described in subsection 19(1) or paragraphs 20(1)(c) or (d) of the Act applies, and if so, whether the remaining material may be severed pursuant to section 25 and released with redactions.

V. **The Relevant Statutory Provisions**

[42] Section 2 sets out the purpose of the Act:

2 (1) The purpose of this Act is to enhance the accountability and transparency of federal institutions in order to promote an open and democratic society and to enable public debate on the conduct of those institutions.	**2 (1)** La présente loi a pour objet d'accroître la responsabilité et la transparence des institutions de l'État afin de favoriser une société ouverte et démocratique et de permettre le débat public sur la conduite de ces institutions.

[43] Subsection 19(1) provides an exception from access for personal information:

19 (1) Subject to subsection (2), the head of a government institution shall refuse to disclose any record requested under this Part that contains personal information.	**19 (1)** Sous réserve du paragraphe (2), le responsable d'une institution fédérale est tenu de refuser la communication de documents contenant des renseignements personnels.

[44] Personal information is defined, with additional references to what is included and excluded from the definition, in section 3 of the *Privacy Act*.

[45] Further exceptions to disclosure are set out in subsection 20(1), for certain information pertaining to third parties:

20 (1) Subject to this section, the head of a government institution shall refuse to disclose any record requested under this Part that contains	**20 (1)** Le responsable d'une institution fédérale est tenu, sous réserve des autres dispositions du présent article, de refuser la communication de documents contenant :
…	…
(c) information the disclosure of which could reasonably be expected to result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, a third party; or	**c)** des renseignements dont la divulgation risquerait vraisemblablement de causer des pertes ou profits financiers appréciables à un tiers ou de nuire à sa compétitivité;
(d) information the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of a third party.	**d)** des renseignements dont la divulgation risquerait vraisemblablement d'entraver des négociations menées par un tiers en vue de contrats ou à d'autres fins.

[46] The exemptions listed in subsection 20(1) are mandatory; where records fall within one of the exceptions, the government institution must refuse to disclose them: *Merck Frosst* at para 98.

VI. **The Evidence**

[47] The Applicants rely on the Affidavit of their Affiant, who is described as the Educational Director of the Corporation ("a private school organization") under which the two Applicants operate.

[48] The Affiant states that the Applicants charge tuition fees and receive government funding on a per-student basis; consequently, their revenue is directly dependent on enrollment. They also compete directly with public and other private schools for enrollment and staff.

[49] The Affiant further states that the Corporation receives additional funding from a Foundation that disperses funds among several schools, including the Applicants. The Affiant attests to the belief that if the records are released, the negative media attention will discourage donors to the Foundation and may cause the Foundation to cease providing funding to the Applicants.

[50] The Affiant attaches as exhibits several news articles reporting on the consequences for the CMHR following the reports of the CMHR's censorship of content during tours of the exhibits.

[51] The Affiant also attaches a news article which the Affiant asserts demonstrates that negative media coverage—in that case relating to tragic events at schools in the United States—can reduce student enrollment. The Affiant believes that if the records are released, the resulting negative media attention would have the same effect.

[52] The Affiant states that the Corporation has a number of online job postings for staff. The Affiant claims that the Corporation recently lost one new hire in another location due to false media coverage unrelated to these proceedings. The Affiant believes that the release of the names of the schools to the media is likely to impair the Applicants' ability to hire and retain staff.

[53] The affiant was cross-examined by the CMHR and CBC, as noted below.

VII. **The Applicants' Submissions**

[54] The Applicants submit that their focus in this Application is on protecting the privacy of the children—i.e., the students who will be affected by any disclosure of the records at issue. They submit that all the information is personal information. The Applicants also contend that the disclosure of any information can be pieced together to reveal the identity of the students.

[55] The Applicants rely on the evidence of their Affiant in support of their submissions that exemptions pursuant to paragraph 20(1)(b) and (c) are required to prevent harm.

[56] The Applicants submit that there is a reasonable expectation of probable harm that would result to them and, in turn, to the students from disclosure of the records. They point to the negative media attention in 2020 regarding the CMHR and submit that the CMHR suffered financial loss and interference with contractual or other negotiations, which are the very harms set out in paragraphs 20(1)(c) and (d) of the Act justifying exemptions. The Applicants point to media reports that the LGBT Purge Fund suspended negotiations with the CMHR regarding a planned exhibit; Pride Winnipeg cancelled a gala that had been planned to take place at the Museum; the Winnipeg mayor resigned from his position on the board of the fundraising arm of the CMHR; the CMHR's CEO did not seek reappointment; and the federal Heritage Minister made negative comments about the CMHR. The Applicants contend that they would suffer similar harm to that suffered by the CMHR if the records were disclosed.

[57] The Applicants add that media attention is likely if the records are disclosed, particularly because the CBC is a Respondent, and this media attention will adversely affect the Applicants.

[58] The Applicants submit that pursuant to paragraph 20(1)(c), the names of the Applicants and the email addresses of staff members should be exempted. They argue that the identification of the schools and of the teachers will lead to negative media attention which in turn will create stigma for the schools and its students, will drive students and their parents away and lead to revenue loss from lower enrollment and donations.

[59] The Applicants submit that this same information should be exempted pursuant to paragraph 20(1)(d) because negative media coverage associated with the schools, if named, can be expected to interfere with upcoming negotiations for donations and recruitment of staff. Similarly, if the names or email addresses of the staff members were released, it would reveal the name of the schools.

[60] The Applicants also submit that the records contain information exempt from disclosure as personal information pursuant to subsection 19(1):

- **The names, address and phone number of the Applicants.** The Applicants argue that, if disclosed, the public could combine the names of the schools with their knowledge of who works at the schools and other information in the records in order to deduce the views and opinions of identifiable individuals.
- **The names of staff members of the Applicants.** The Applicants argue that this reveals personal information and divulges the opinions and views of those individuals.
- **The email addresses of staff members of the Applicants.** The Applicants argue that this would reveal the names of both the schools and the individual staff members.
- **The phone numbers of staff members of the Applicants**. The Applicants argue that this could be combined with publicly available information to determine which school and individual staff member the records concern.

- **The position held by staff members of the Applicants**, which in combination with the names of the schools would reveal the identity of the staff member in question.
- **The grade levels of the students on the tours.** The Applicants argue that, in combination with prior knowledge and the school names, this would reveal information about the education received by particular students, which is personal information.

[61] The Applicants dispute CBC's submission that the personal information should be disclosed regardless because the public interest in disclosure outweighs the privacy interest. The Applicants reiterate that any information released can be pieced together to identify the students, whose privacy should be protected.

[62] The Applicants submit that once the exemptions are applied, the remaining records have little meaning and, as a result, nothing should be disclosed. In the alternative, they request that the information noted above be severed. The Applicants add, however, that severance of parts of the record could result in the release of misleading information.

[63] The Applicants stated at the hearing that they would prefer to never have been associated with this issue in the first place, but did not explain what prevents them from clarifying their position or any potentially misleading information that may ultimately be disclosed.

VIII. **The CMHR's Submissions**

[64] The CMHR notes that the starting point of the Act is that information should be disclosed and that any exceptions to this principle are limited and specific. Moreover, the onus is on the person seeking to prohibit disclosure to provide cogent evidence to establish on a balance of

probabilities that an exception applies. The CMHR submits that the Applicants have not met their onus.

[65] The CMHR submits that the evidence falls far short of demonstrating a reasonable expectation of probable harm as required by paragraphs 20(1)(c) and (d) of the Act. The CMHR notes that the Applicants' Affiant set out very general and unsupported statements.

[66] The CMHR submits that the Applicants cannot rely on the harm caused to the CMHR to speculate that the Applicants will suffer the same harm, noting, among other things, that the Applicants are very different organizations with vastly different community relationships and mandates. The CMHR adds that the evidence of the harm to the CMHR is double hearsay, as the Affiant's knowledge originates from newspaper articles.

[67] The CMHR also submits that the Applicants' reliance on an article—allegedly reporting the impact of news coverage of tragic school events—to show probable harm is misplaced and speculative. The article does not suggest that media coverage causes any harm.

[68] The CMHR also notes that there is no evidence that the two staff members who made the tour request were not authorized to do so by the Applicants. If the Applicants prefer not to be associated with the tour request, they have the option of disavowing the actions of their staff members.

[69] The CMHR submits that there is no objective evidence that the release of the records will probably cause the Applicants material financial loss or prejudice their competitive position, within the meaning of paragraph 20(1)(c). There is also no evidence that funding from the Foundation would be affected or that the records would reveal sensitive business information that could be used by the Applicants' competitors to their disadvantage. The CMHR notes that the Affiant admitted on cross-examination has little direct knowledge of either the Applicants' finances or the records in issue. The CMHR submits that the Affiant's assertion that release of the records would impact the hiring and retention of staff is entirely speculative.

[70] The CMHR also submits that the Applicants have not identified any specific, actual and ongoing negotiations that would be obstructed by the release of the records within the meaning of paragraph 20(1)(d).

[71] The CMHR disputes the Applicants' contention that personal information will be disclosed. The CMHR notes that the subsection 19(1) exemption applies to information that both identifies an individual and is about that individual. The CMHR argues that given the proposed redactions of the names of the individual staff members who made the tour request, their contact information, and the grade levels of the students who were anticipated to attend the tour, the disclosure of the names of the Applicants (i.e., the names of the schools)—which is the outstanding issue—would not lead to the identification of any individuals. In addition, none of the information in the records reveals information about individuals, as those individuals cannot be identified and there is no way to determine whose opinion led to the requests. The CMHR submits that, at most, the records might suggest information about course content, which is not personal information about the students. The CMHR submits that to constitute personal

information, disclosure must be of a "significant part of the history of the person's … education," and that a single event, such as a proposed tour, does not qualify.

[72] The CMHR further submits that any information subject to an exemption from disclosure can be reasonably severed from the records.

IX. **The CBC's Submissions**

[73] The CBC agrees with the CMHR and provides additional submissions. The CBC notes that the purpose of the Act and its exceptions is not to prevent embarrassment (see *Bronskill v Canada (Canadian Heritage)*, 2011 FC 983 at para 131 [*Bronskill*]).

[74] The CBC submits that the Affiant had no role in the Applicants' operations and no direct knowledge of the matters he purported to address, including the Applicants' finances. The CBC notes that the Affiant misstated some facts, including that both Applicants receive funding from the Foundation, but stated otherwise on cross-examination. The CBC submits that the Court should completely reject the Affiant's evidence or attribute no weight to it as it is purely speculation.

[75] The CBC further submits that there is no evidence that the students who were anticipated to attend the tour need protection from anything or that any harm will be caused to the students by the disclosure of the records.

[76] The CBC adds that anticipated negative media attention does not justify an exemption from disclosure, and that the alleged harm that could result lacks any factual foundation. CBC

reiterates that the Applicants' argument fails to account for the fundamental differences between the CMHR and the Applicants. There is no evidence of a relationship between the Applicants and the LGBTQ community that would be affected. There is no evidence to establish a probability that the Applicants' funding will be affected at all, let alone in a "material" way as required by the Act.

[77] The CBC argues that the risk of reduced enrollment is also purely speculative. The CBC notes, as does the CMHR, that the article relied on by the Applicants in support of this allegation is not about the impact of media coverage and cannot support the Applicants' argument that negative media attention will probably impact student enrollment or staff recruitment.

[78] With respect to paragraph 20(1)(d), CBC submits that there is no evidence of any actual and specific negotiations that would be impaired by the release of the records. CBC notes that donations to or from the Foundation are not "negotiated."

[79] CBC disputes the Applicants' submission that the fact that CBC, a media organization, made a request for the records suggests that there will be media coverage of the release of the records, which will cause harm to the Applicants. CBC notes that media organizations are entitled to make requests for access to information from government institutions and do so. CBC points to *Concord* at para 52, where the Court reiterated that "anticipated negative or inaccurate media reporting about the information will not be sufficient to meet the test."

[80] With respect to the exceptions for personal information pursuant to subsection 19(1), the CBC submits that no information should be exempted from disclosure and the redactions

proposed by the CMHR are, therefore, not necessary. The CBC submits that the records do not reveal any personal opinion but simply set out the requests to censor Museum content without any further explanation.

[81] In the alternative, CBC agrees that if the disclosure of the name of a staff member of the school is found to reveal their personal opinion, that name should be severed, along with any other identifying information such as their email, phone number, and position. In oral argument, CBC no longer appeared to object to the redaction of the staff members' names as personal information.

[82] The CBC submits that the grade levels do not warrant redaction because this does not disclose personal information about the students. The grade levels of the students who were anticipated to attend the tour does not fall within the meaning of "education" for the purposes of the definition of "personal information" in the *Privacy Act*. The CBC submits that "education" means the educational history of an identifiable person, not an aspect of the curriculum or of a particular class or event. The CBC adds that there is no evidence that the request to censor content was attached to the educational curriculum, noting that the Affiant states that the Applicants did not direct the staff members to make the particular requests. As a result, CBC argues, there is no basis to claim that the records reveal something about the education of any particular student.

[83] The CBC alternatively submits that if the fact that the grade levels of the students who were intended to attend or attended the tour identifies them or constitutes personal information, the records should nonetheless be disclosed pursuant to paragraph 19(2)(c) of the Act and

subparagraph 8(2)(m)(i) of the *Privacy Act*. The CBC submits that the public interest in disclosure outweighs any invasion of privacy, noting that the expectation of privacy in the information at issue was low, given that the tour would have been in a public space, and any invasion of the privacy interests of the students involved is minimal. On the other hand, understanding the CMHR's decision to grant the request and censor content is of significant public interest, and knowing who requested this censorship and why is related to understanding the CMHR's decision.

[84] The CBC submits that if the Application is dismissed, the Court should vacate the Confidentiality Order and Anonymity Order and the Court's record should be unsealed with the style of cause reverting to the original style of cause.

X. **The Applicants Have Failed to Meet Their Onus to Establish a Reasonable Expectation of Probable Harm**

[85] The exemptions in paragraphs 20(1)(c) and (d) require that the party claiming the exemptions—in this case, the Applicants—establish material financial loss or gain, prejudice to competitive position, or interference with contractual or other negotiations: *AstraZeneca Canada Inc v Health Canada*, 2005 FC 1451 at para 42 [*AstraZeneca*]. The Applicants have not done so.

[86] The Applicants' speculation about harms to their finances and contractual negotiations are not grounded in any "ascertainable facts, credible inferences and relevant experience" (*Calian* at para 50).

[87] In response to the Court's question whether the alleged harm was likely given that four years have passed since the request was made, the Applicants pointed to the evidence of their Affiant, who noted that there is competition for enrollment. The Applicants also argued that if this information were disclosed now, there would be a new stigma and probable harm because the views of those who requested that the tours be tailored to avoid certain content would be attributable to the Applicants. The Applicants did not address why they could not simply speak out and clarify whether they shared these views.

A. *Paragraph 20(1)(c)*

[88] The party relying on paragraph 20(1)(c) must establish a "reasonable expectation of probable harm": *Merck Frosst* at para 192; *Concord* at para 46; *Air Atonabee Ltd v Canada (Minister of Transport)*, 1989 CarswellNat 585 at para 34, 27 FTR 194 [*Air Atonabee*]; *Canada Packers Inc v Canada (Minister of Agriculture)*, 1988 CanLII 1421 at para 22, [1989] 1 FC 47 (FCA); *Burnbrae Farms Limited v Canada (Canadian Food Inspection Agency)*, 2014 FC 957 at para 102 [*Burnbrae Farms*]. The Supreme Court has clarified that this standard means that a party need not show on a balance of probabilities that harm will in fact occur, but must establish considerably more than a mere possibility of harm: *Merck Frosst* at paras 196–97, 199. As noted by the Supreme Court of Canada in *Merck Frosst* at para 204, "[e]xemption from disclosure should not be granted on the basis of fear of harm that is fanciful, imaginary or contrived." What is required is "an expectation for which real and substantial grounds exist when looked at objectively."

[89] The jurisprudence has acknowledged that some speculation is inherent. In *Astra Zeneca*, at para 90, the Court explained:

> While there is an element of forecasting and speculation inherent in this criterion, there are methods of establishing the reasonableness of the expectation. Mere recitation of the fear by an officer of the company is not sufficient. The Court requires specific evidence that those outcomes are reasonably probable.

[90] In the present case, the Applicants rely on an affidavit which provides minimal information, by a person who has no direct knowledge of the issues and only speculates about harm. The jurisprudence establishes that it is not sufficient for a party to provide an affidavit stating in vague and speculative terms that disclosure is likely to cause harm; there must also be evidence of the likelihood of such harm: *Les Viandes du Breton Inc v Canada (Department of Agriculture)*, 2000 CanLII 16764 at para 9, 198 FTR 233; *Canada Post Corporation v Canada (Minister of Public Works and Government Services)*, 2004 FC 270 at para 45.

[91] The Applicants have not provided any relevant evidence to support their contention that negative media attention will lead to lower enrollment and, in turn, cause financial loss and prejudice their competitive position in relation to other schools. The article attached to the affidavit—purporting to show that negative media coverage of tragic events at schools in the US led to decreased enrollment—does not say this at all. The article highlights that such events have many and varied impacts on the students, which continue over time, and that studies are needed to best determine what the students need. The article notes that decreased enrollment and lower test scores were observed in some studies. However, the article does not suggest that negative press coverage was a cause or contributing factor to these impacts, but rather that these impacts were the result of the events that occurred.

[92] The Applicants also speculate that negative media attention may impact their funding from the Foundation by discouraging donations to the Foundation or discouraging the Foundation from providing funding to the Applicants.

[93] The Applicants' reliance on the criticism levelled against the CMHR following the revelation that the CMHR agreed to censor some content, the cancellation of events, and the impact on the CMHR's relationship with stakeholder groups does not demonstrate probable harm to the Applicants. The news articles relied on by the Applicants do not provide evidence that the CMHR suffered financial harm or lost donations. As noted by the CMHR and CBC, the CMHR is an entirely different type of organization than the Applicants. The CMHR is mandated to educate the public regarding human rights, including human rights abuses. The Applicants are private schools and have not explained their mandate or values, but they are entirely different. If the Applicants anticipate negative attention, the Applicants can take measures to more clearly articulate their views, which they have not done to date publicly or in this Application. In addition, as the CBC notes, on cross-examination, the Affiant admitted that only one of the Applicants receives funds from the Foundation.

[94] While the disclosure of the records may lead to follow-up media coverage of the underlying events—although four years has passed and the interest may have waned—this does not suggest harm within the meaning of the Act. Anticipated negative media reporting about the information is not sufficient on its own to warrant the exemption from disclosure. As noted in *Concord* at para 52:

> The case law is clear that anticipated negative or inaccurate media reporting about the information will not be sufficient to meet the

> test. As stated in *Merck Frosst*, the point of the *Act* "is to give the public access to information so that they can evaluate it for themselves, not to protect them from having it. In my view, it would be quite an unusual case in which this sort of claim for exemption can succeed" (at para 224). In part, this is because a third party concerned about unfair negative media coverage has other remedies to address such questions (*Burnbrae Farms Ltd v Canada (Canadian Food Inspection Agency)*, 2014 FC 957 at paragraphs 112-113 [*Burnbrae Farms*] citing with approval *Les Viandes du Breton Inc v Canada (Department of Agriculture)* (2000), 198 FTR 233 at para 23, 2000 CanLII 16764 [*Les Viandes du Breton 2000*].

[95] Access to information should not be restricted simply because its release will be embarrassing or unfavourable (*Bronskill* at para 131); the party seeking non-disclosure must demonstrate that the information is so unfavourable that it will cause one of the harms described in paragraphs 20(1)(c) and (d): *Coopérative Fédérée du Québec v Canada (Agriculture and Agri-Food)*, 2000 CanLII 14811 at para 11, 180 FTR 205.

[96] The Applicants have completely failed to show any evidence about the effect that possible press coverage will have on them. The Applicants have not provided any evidence about the schools' philosophy or values, its donors, or the concerns, if any, of parents of the students, to indicate how possible media coverage may result in any financial harm.

[97] In addition, as noted by the CBC, any probable financial loss (if this had been established) must be material (*AstraZeneca* at para 92). The evidence indicates that only one of the Applicants receives funding from the Foundation, and there is no evidence of the materiality of the financing received. As noted, the Affiant admits to having little knowledge of the Applicants' finances. The Applicants noted that they also received government funding; however, there is no evidence of various funding sources and in what percentages or how even a

speculative reduction in funding from either the Foundation or other donors would cause "material" financial loss, let alone any loss.

[98] The Applicants have also failed to establish any probable or possible harm to their competitive position. The Affiant states only that they compete with private and public schools for enrollment and staff, but offers no information about the markets in which they allegedly compete or other information to put this assertion in perspective.

B. *Paragraph 20(1)(d)*

[99] To rely on the exemption in paragraph 20(1)(d) the Applicants must show a reasonable anticipation of interference—in the sense of obstruction—with ongoing, actual negotiations; hypothetical risk to future business opportunities does not meet the test: *Concord* at para 116; *Burnbrae Farms* at paras 124–25. The Applicants have not done so.

[100] The Applicants merely assert that the release of the records is likely to impact their recruitment and retention of staff and also may impact funding from the Foundation. As noted, there is no evidence at all about how the Foundation funds schools or the Applicants, and no evidence that this funding is negotiated. With respect to the impact on staff, the Affiant noted only the loss of one new hire due to unrelated media attention in one school located in the United States that is nowhere near the Applicants' schools. The Applicants provided no evidence about the number of staff in each school or within the Corporation or how they recruit staff, how many positions are vacant, regular turnover rates, or any other information that would support their

view that the release of the records could discourage staff. Again, there are other ways for the Applicants to address their reputational concerns.

XI. **The Records As Redacted Do Not Contain Personal Information**

[101] The *Privacy Act* defines "personal information" in section 3 as "information about an identifiable individual" and provides many examples of what is and is not personal information. This definition is intended to capture any information about a specific person, subject only to specific exceptions: *Canada (Information Commissioner) v Canada (Commissioner of the Royal Canadian Mounted Police)*, 2003 SCC 8 at para 23, citing *Dagg v Canada (Minister of Finance)*, [1997] 2 SCR 403 at paras 68–69, 148 DLR (4th) 385 [*Dagg*]. Privacy is based on the dignity and integrity of the individual, and stems from the premise that all information about an individual is fundamentally their own, for that individual to communicate or retain as they see fit: *Dagg* at para 67. As noted in *Canada (Information Commissioner) v Canada (Transportation Accident Investigation and Safety Board)*, 2006 FCA 157 at para 52, "[p]rivacy thus connotes concepts of intimacy, identity, dignity and integrity of the individual."

[102] The Applicants' reliance on subsection 19(1), which exempts personal information from disclosure, is based on their assertion that the records reveal the personal opinions and beliefs of identifiable staff members and that the records reveal the personal educational history of identifiable students.

[103] It has not been established how the disclosure of the names of the two staff members, whose positions within the Applicants' organization are not described, would disclose their

personal views or opinions. The Affiant did not know why such requests were made, but added that “it was not something that we would have directed them to do.” However, the Affiant admitted on cross-examination that he had not spoken to any representative of the Applicants regarding the events underlying the records. The records disclose only that two staff members made the requests.

[104] However, given that the staff members could appear to be responsible for making the request and the inference could be drawn that they made the request because they share the opinion that the students should not be exposed to certain museum content, the names of the staff members should be redacted, along with information tending to identify them. Redaction of the names of the staff members and their contact information, and position (if it is even indicated) is sufficient to render them unidentifiable. However, disclosing the Applicants’ identities would not reveal the staff members who made or relayed the requests.

[105] The Applicants’ assertion that revealing the grade levels of the students who were slated to participate in the tour would reveal personal information about the educational history of identifiable students is without merit. Nothing in this information can be extrapolated to reveal the personal educational history of any student or to identify any student.

[106] At the hearing of the Application, the Applicants focussed on the privacy rights of the children that would be affected if “personal information” were released. However, the only information regarding the students of the schools that had requested the tour was their grade level and the anticipated number of students that would attend. It was revealed at the hearing that

there is no evidence whether the tour occurred at all or whether any students actually attended the tour. There is also no evidence whether the anticipated number of students comprises a significant or very small percentage of the student body. If 100 participants were planning to attend or did attend out of a student body of 110, then perhaps this could lead to identifying the students. But this is unknown. The lack of evidence does not permit the Court to conclude that the identity of the students—or any other information about them—could be gleaned from information about the grade levels of students who may or may not have toured the CMHR. In addition, if the tour did take place, it was in a public place where the students could have been recognized by anyone else present.

[107] The case of *Re British Columbia (Ministry of Education)*, 2009 CarswellBC 4356, [2009] BCIPCD No 27, relied on by the Applicants, is not analogous because it concerned personal information about identifiable students, including both demographic data and testing results. In the present case, even if individual students could be identified from the information contained in the records, all that could be gleaned is that they may have attended a tour at the CMHR where certain content was concealed or avoided. This does not constitute personal information about the students.

[108] As noted by the CMHR, attendance on one field trip on a particular day is not analogous to aspects of a students' educational history such as their academic performance, courses taken, or schools attended.

XII. **Exempted Information Can Be Severed**

[109] The information exempted from disclosure—the names of the staff members and their contact information—can easily be severed, with the remainder of the records, which are in any event brief, disclosed.

[110] Section 25 of the Act requires government institutions to disclose any information that is not exempt from release and that can be reasonably severed from exempted information. The remaining information, with redactions, will convey meaning and reasonably fulfil the purposes of the Act: *Merck Frosst* at para 237; *Air Atonabee* at paras 69–70. In the present case, the redactions are minimal.

[111] I do not agree with the Applicants' submission that any disclosed information can be pieced together to reveal personal information. The records to be released will reveal only that the Applicants proposed to have some students participate in a tour of the CMHR and had requested that the tour avoid specific content.

[112] In conclusion, the Application is dismissed.

XIII. **Next Steps**

[113] The Applicants oppose the CBC's submissions that the terms of the Confidentiality Order should no longer apply if the Court dismisses the Application and finds that the records should be disclosed. The Applicants point to the terms of the Protective Order in support of their

position that they produced and filed information on the understanding that it would not be disclosed. The Applicants submit that the terms of the Protective Order continue to prevent the disclosure of Confidential or Solicitors' Eyes Only information and that this information is required to be destroyed following the termination of any appeals.

[114] In response to the Court's question about what information the Applicants had filed that would not have been filed but for the Protective Order, the Applicants noted the name of the Foundation that provided funding, the name of the Affiant and the name of the Corporation as examples. The Court notes that this information is not disclosed in the records that the Court finds should be released by the CMHR.

[115] Protective Orders are understood to govern the treatment of confidential information as between the parties. In *Canadian National Railway Company v BNSF Railway Company*, 2019 FC 281, the Court noted at para 10:

> Before discussing the legal test in *Sierra Club*, it is apt to clarify some nomenclature. As used herein, consistent with modern use, a protective order is an order which prescribes the treatment of confidential information, but does not provide for the filing of confidential information with the Court. A confidentiality order is one that does address the filing of confidential information with the Court. There are also hybrid orders which have provisions that are characteristic of both protective orders and confidentiality orders.
>
> [Emphasis in the original]

[116] Although the Applicants submit that the Protective Order should govern the future disclosure of the information the Applicants seek to shield, the Protective Order requires the

parties to maintain the confidentiality of information disclosed to them as marked Confidential or Solicitors' Eyes Only.

[117] In the present case, there is also a Confidentiality Order which provides that certain information designated as Confidential may be filed and treated as confidential. This includes the unredacted records, the names, addresses, phone numbers and domain names of the Applicants, and any other information that could reasonably identify the Applicants. The Confidentiality Order provides that the terms and conditions of the use of confidential information and the maintenance of confidentiality during the hearing of this Application is in the discretion of the Court hearing this matter and that the Order does not apply to the manner in which the final judgment and reasons are written unless the Court so orders.

[118] There is no reason for the Court to conceal more information than necessary to reflect the application of the applicable exemptions in the Act. In this case, paragraphs 20(1)(c) and (d) do not apply as there is no evidence of any probable harm that will be caused by the release of the proposed records with the redaction of names. It is illogical and contrary to the purposes of the Act to permit, as the Applicants appear to request, the Court's record to protect information the Applicants do not want to be public simply because they do not want to be aligned with the events that underlie this proceeding. As noted, nothing prevents the Applicants from clarifying their views if they wish to do so to their donors, students and the public in general. Public relations issues need not be addressed by the courts.

[119] The Court has endeavoured to provide its reasons in a manner that avoids disclosure of the allegedly exempted information pending the final disposition of any appeals. However, the Court first provided confidential reasons and provided an opportunity to the parties to make submissions on the need for any redactions. The parties have indicated that no redactions are necessary, and as a result, this public version can now be issued.

[120] The Confidentiality Order will remain in place pending the determination of any appeal.

[121] The ultimate determination of disclosure of information in the Court's records may be determined at a future date, following the disposition of any appeals.

XIV. **Costs**

[122] The CMHR and the CBC both seek their costs to be assessed in accordance with the Tariff.

[123] The CMHR submits that the record amply demonstrates that the Applicants engaged in tactics to prevent the timely determination of this application, including seeking an Anonymization Order well after the Applicants had filed material which included their names, initially opposing the CMHR being added as respondent, and bringing the motion to remove a document from the record, without any logical or legal reason or any authority. The CMHR also notes that the Applicants did not consent to the CMHR providing the Solicitors' Eyes Only documents to the CBC, but subsequently filed an unredacted version of that same information.

The CMHR submits that the relevant factors support costs to be awarded to the CMHR at the high end of column IV, Tariff B.

[124] The CMHR notes that parties are required to make their cost submissions at the hearing of the Application, yet the Applicants were not prepared to do so. The CMHR notes that counsel for the Applicants has been engaged since before this Application was brought, and cannot distance themselves from the choices made earlier in the process.

[125] The CBC also seeks its costs at the high end of column IV, Tariff B. The CBC notes that the Applicants refused to provide basic information to the CBC, including who the parties were, and counsel refused to provide dates of availability for a hearing of the CBC's proposed motion, which the CBC eventually withdrew to permit the application to proceed in a more timely way. Counsel refused all questions and claimed the need for anonymity, thwarted the CBC's ability to cross-examine the Affiant, then later provided the CBC with an unredacted record.

[126] The Applicants provided brief written submissions in response to the oral submissions of the Respondents. The Applicants dispute that there was any misconduct on their part and submit that the steps they took were in the best interests of their client to protect the privacy interests at issue. The Applicants dispute that their motion to remove a document from the record was without merit.

[127] Rule 400 provides that the Court has discretion to determine whether costs should be awarded and in what amount. The non-exhaustive factors set out in Rule 400(3) provide guidance to

the Court in making this determination (*Francosteel Canada Inc v African Cape (The)*, 2003 FCA 119). The factors do not relate exclusively to costs pursuant to the Tariff or lump sum awards, but to all cost awards.

[128] The factors include the result of the proceeding; the importance and complexity of the issues; any written offer to settle; the amount of work; the conduct of a party that tended to shorten or lengthen the proceeding; whether any step in the proceeding was improper, vexatious or unnecessary; and any other matter that the Court considers relevant.

[129] The result of the proceeding usually carries significant weight because, as a general rule, costs should follow the event (*Merck & Co Inc v Novopharm Ltd*, 1998 CanLII 8260 at para 24, 152 FTR 74 (FCTD)).

[130] In *Consorzio del Prosciutto di Parma v Maple Leaf Meats Inc*, 2002 FCA 417, the Court of Appeal provided guidance regarding the exercise of the Court's discretion in awarding costs, at paras 8–10, noting among other things that the Court's discretion should be exercised prudently, and an award of costs is not an accounting exercise. With respect to the Tariff, the Court of Appeal noted that "[u]nder rule 407, where the parties do not seek increased costs, costs will be assessed in accordance with column III of the table to Tariff B. Even where increased costs are sought, the Court, in its discretion, may find that costs according to column III provide appropriate party-and-party compensation" (para 8).

[131] In the present case, the Respondents, CMHR and CBC, are both entitled to their costs given their success on this Application. A review of the recorded entries supports the Respondents' submissions that some choices were made by the Applicants that caused extra work and delayed the determination of this Application, including the unmeritorious motion heard at the outset of the hearing of this Application. I am not persuaded by the Applicants' submission that some, perhaps unnecessary, steps were taken due to the need to adjust to changing practices in the earlier days of the pandemic. However, I am also not persuaded that costs at the upper end of column IV are justified. Considering all the relevant factors and the circumstances, the Respondents' costs should be assessed at the upper end of column III, Tariff B.

JUDGMENT in file T-1325-20

THIS COURT'S JUDGMENT is that:

1. The Applicants' motion to remove a document from the Certified Tribunal Record is dismissed.

2. The application pursuant to section 44 of the *Access to Information Act* is dismissed.

3. The Respondent Canadian Museum for Human Rights is ordered to maintain the redactions proposed in its final decision of October 23, 2020, except for the grade levels of the students, which should be disclosed.

4. The Applicants shall pay to the Respondents their costs to be assessed in accordance with the high end of column III, Tariff B.

5. The Confidentiality Order dated January 8, 2021, is extended pending the final determination of any appeal of this judgment.

"Catherine M. Kane"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1325-20
STYLE OF CAUSE:	A INC. AND B INC. v CANADIAN MUSEUM FOR HUMAN RIGHTS AND CANADIAN BROADCASTING CORPORATION
PLACE OF HEARING:	OTTAWA, ONTARIO HELD BY VIDEOCONFERENCE
DATE OF HEARING:	MAY 30 and 31, 2022
CONFIDENTIAL JUDGMENT AND REASONS:	KANE J.
DATED:	JULY 26, 2022

APPEARANCES:

D. Bronwhyn Simmons	FOR THE APPLICANTS
Todd Andres	FOR THE RESPONDENT CMHR
Sean Moreman	FOR THE RESPONDENT CBC

SOLICITORS OF RECORD:

Miller Thompson LLP Calgary, Alberta	FOR THE APPLICANTS
Pitblado LLP Winnipeg, Manitoba	FOR THE RESPONDENT CMHR
Canadian Broadcasting Corporation Toronto, Ontario	FOR THE RESPONDENT CBC