

NOVA SCOTIA COURT OF APPEAL

Citation: Unama'ki Board of Police Commissioners v. Canadian Broadcasting Corporation , 2003 NSCA 124

Date: 20031120

Docket: CA 195728

Registry: Halifax

Between:

Unama'ki Board of Police Commissioners, Chapel Island
Band Council, Eskasoni Band Council, Membertou Band
Council and Waycobah Band Council

Appellants

v.

John Chesal, of the Canadian Broadcasting Corporation CBC Radio
and the Attorney General of Nova Scotia

Respondents

JUDGE: BATEMAN, J.A.

APPEAL HEARD: October 7, 2003

JUDGMENT DELIVERED: November 19, 2003

SUBJECT: Freedom of Information and Protection of Privacy Act, S.N.S.
1993, C. 5

SUMMARY: CBC reporter Chesal applied to the Nova Scotia government under the **Freedom of Information and Protection of Privacy Act** (the "**FOIPOP Act**") for release of a 1999 audit of the Unama'ki Tribal Police Force (the "UTP") which police force was funded by the federal and provincial governments and responsible for providing police services to certain reserve lands. The Chief of the

Membertou Band objected to the release of the report. The **FOIPOP** Coordinator refused its release. The matter was ultimately before the Supreme Court where the judge ordered that the report be released. The Bands involved in the UTP appealed, objecting to the disclosure of the Audit report.

ISSUES:

1. Did the Chambers judge apply the wrong test in determining whether there was a reasonable expectation of harm arising from release of the information contained in the Audit Report (s. 12(1)(a)(iii) of the **Act**)?
2. Did the Chambers judge err in concluding that the Audit Report was not information received in confidence (s. 12(1)(b) of the **Act**)?
3. Did the Chambers judge err in concluding that the personal information contained in the Audit Report fell within s. 20(4)(e) of the **Act**?

RESULT:

While the test stated by the Chambers judge as applicable under s. 12(1)(a)(iii) was in error, he did not err in the result. A reasonable expectation of harm requires more than a mere possibility of harm. The evidence here fell short of meeting the statutory standard. The Chambers judge did not err in concluding that the information contained in the report was not received in confidence within the meaning of s. 12(1)(b) which requires an expectation of confidence on the part of both the recipient and the supplier of the information. Nor was he wrong in holding that the personal information contained in the Audit Report fell within s. 20(4)(e).

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 37 pages.