IN THE SUPREME COURT OF NOVA SCOTIA
and

IN THE MATTER OF AN APPEAL PURSUANT TO SECTION 41 OF THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT, S.N.S. 193, c. 5

Citation: Griffiths v. Nova Scotia (Education), 2005NSSC118

Date: 20050222
Docket: SH 230793
Registry: Halifax

Between:

Tom Griffiths

Appellant

v.

Nova Scotia Department of Education

Respondent

Judge:	The Honourable Justice M. Heather Robertson
Heard:	February 22, 2005, in Halifax, Nova Scotia
Decision:	February 22, 2005 (Orally)
Written Decision:	May 16, 2005
Counsel:	Bradley H. Ridge, for the appellant Edward A. Gores, for the respondent

Robertson, J.: (Orally)

[1] This is an appeal pursuant to s. 41 of the *Freedom of Information and Privacy Act ("FOIPOP").* Mr. Tom Griffiths, the appellant brought this appeal because of the refusal of the Department of Education to provide the names of those individuals with current certificates of qualification and certificates of apprenticeship in the construction electrician trade; this despite a recommendation from the review officer under *FOIPOP* to do so. The appellant submits the requested information must be released because of "details of a license permit, or similar discretionary benefit" pursuant to paragraph 24 (h) of the *Act* and accordingly is presumed not to be an unreasonable evasion of privacy and must be disclosed.

[2] Alternatively, the appellant submits even if the requested information does not fall within paragraph 20(4)(h) when all the circumstances are examined under s. 20, it becomes clear that the disclosure of the requested information would not be an unreasonable invasion of a third parties' privacy and as such must be disclosed.

[3] They suggest this conclusion is supported by the fact that the Department of Education has a practise of disclosing this information on an individual by individual basis and that the disclosure is likely to promote public health and safety. Section 20(2)(c).

[4] And the appellant submits that on either basis the court should find that the Department of Education is not authorized to refuse access to the information pursuant to the provisions of *FOIPOP* and accordingly the court should order the Minister of Education to disclose the requested information to the applicant to subsection 42(5) of the *Act.*

[5] Now, early in the day we tried to focus on some agreements that counsel had achieved and to reduce the argument to the important issues. Certain agreements were therefore achieved: One, Counsel agree on the framework and purpose of the *Act* as reflected in the various cases they have cited to the court and pursuant to s. 3 of the *Act*. Secondly, Counsel agree on the standard review and agree that the matter proceeding before me is a trial *de novo*. Thirdly, counsel agree that the names on the requested list do qualify as personal information as defined by the *Act*. So, the real issue before me has been the interpretation of s. 20. In the

circumstances of this case, should the requested information be released? Counsel, it is fair to say also agree with the analysis set forth in *Re Cyril House and 144900 Canada Inc.*, 2000 Carswell NS 429 (N.S.S.C.) articulated by Justice Moir. In that decision he describes the process of analysis, in which the court must engage. At para. 6 Justice Moir stated:

> As I read it, if any of the nine circumstances specified in s. 24(4) applies then there is no unreasonable invasion of privacy, and the information would have to be produced. I proposed to consider this appeal in the following way:
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> (1) Is the requested information "personal information" within s. 3(1)(i)? If not, that is the end. Otherwise, I must go on.
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> (2) Are any of the conditions of s. 20(4) satisfied? If so, that is the end. Otherwise ...
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> (3) Is the personal information presumed to be an unreasonable invasion of privacy pursuant to s. 20(3)?
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> (4) In light of any s. 20(3) presumption, and in any light of the burden upon the appellant established by s. 45(2), does the balancing of all relevant circumstances, including those listed in s. 20(2), lead to the conclusion that disclosure would constitute an unreasonable invasion of privacy or not?

[6] The steps articulated in the *House* case are very similar to the issues described by the appellant in this matter and I will proceed on that basis. Now, factually we know that Mr. Griffiths was asking for a list of the qualified persons with current certification of qualification and certificates for apprenticeship for the construction electrician trade. Mr. Griffiths has been in the construction industry since 1975 and he is the business representative of the International Brotherhood of Electrical Workers, Local 625 which I will refer to in the future as ("IBEW, Local 625").

[7] In Nova Scotia, the construction electrician trade is governed by and regulated by the *Apprenticeship and Trades Qualifications Act*. Section 2 of that *Act* defines certificate of apprenticeship and a certificate of qualification as certificates issued pursuant to the *Act*.

[8] The *Act* and associated regulations recognizes nine trades that require compulsory certification. That is to say, individuals have to be in receipt of

certificates for apprenticeship or certificate of qualification to legally perform work in the trade in the Province of Nova Scotia. We would all agree that compulsory certification is based on reasons of public and/or worker's safety.

[9] The appellant has pointed out to the court that the electrical trade is a hazardous trade to both the workers and users of the end product. Particularly in circumstances where the users of the end product do not see the work as it often covered up behind walls, beneath floors, etc. Inherently it is a hazardous trade and public safety issues are a very significant concern.

[10] Counsel have agreed that there is a history of cooperation among government and labour and employers and the enforcement division of the Department of Education in the practise of sharing information and relying on information and complaints from external sources to maintain compliance with the *Act.* So, it is in the best interests of the members of the trade, to police the trade and to make complaints if they have any doubts about the qualifications of people working in their trade. There is a certain acceptance of the sharing of information between people in the trade and the Department of Education, to confirm whether certain individuals are qualified and certified under the *Act.*

[11] Counsel also agree that members of the public can determine whether specifically named individuals are in possession of a certificate of apprenticeship or a certificate of qualification on specified date by calling the Department of Education who will respond to the request, by confirming whether an individual is so qualified. They may not return the information immediately but would do so in a few days. So, in a certain sense the information is already used in a public way.

[12] Counsel have also agreed that there is a complaint's procedure whereby an enforcement officer will investigate complaints where there is non compliance with the *Act.* That might involve an individual who is not properly qualified or the ratio of the number of qualified apprentices to qualified electricians on any one site. The ratio must not exceed one-on-one. There is also the possibility that a completely unqualified person is working in the trade.

[13] Mr. Ridge has explained to the court there may be as many as 1200 electricians working in the province. I accept that given the nature of the work in the construction industry, individuals are working in various locations across the

province and may be in one location on one day and another location on another day.

[14] I accept the applicant's suggestions that if the requested list of individuals was provided it would assist them in ensuring that accurate and timely information was available respecting the qualification of individuals who may be working in the trade on any site in this province.

[15] Section 20 of the *Act* deals with the refusal to disclosure information that is deemed to be personal by the Department.

> 20(1) The head of the public body shall refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.
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> (2) In determining pursuant to s. 1 or 3 whether a disclosure of personal information constitutes an unreasonable invasion of the third party's personal privacy, the head of the public body, shall consider all of the relevant circumstances including whether; (f) the personal information has been supplied in confidence.
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> (3) The disclosure of the personal information as presumed to be an unreasonable invasion of a person's personal privacy if; (d) the personal information relates to employment or educational history; or (d)(1) the personal information consists of the third party's name, together with the third party's address or telephone number and has to be used for mailing list or solicitation by telephone or other means.

[16] Having heard the submissions of counsel and received your briefs and list of authorities, I make the following findings with respect to this matter.

(1) The requested information is personal information.

(2) However, I am not prepared to find that the conditions of s. 20(4) are satisfied and that the issuance of the certificate is necessarily a discretionary benefit. *The Apprenticeship Trades and Qualification Act* specifies that the director shall issue certificates.

[17] Section 21 of the *Act* provides that:

> Subject to the regulations the director shall issue a certificate of qualification in a designated trade to a person who (a) holds a certificate of apprenticeship or (b) in the opinion of the director otherwise meets the standard and requirements established by the trade and has successfully completed the related certification examination.

[18] Moving on to step three of the process to consider if the disclosure of the personal information could be presumed to be an unreasonable invasion of privacy pursuant to s. 20(3), the respondent argued that if it relates to employment or educational history or could somehow be used inappropriately as contemplated by s. 23(d)(i), then the director could not possibly disclose this information. I do not agree with this argument.

[19] The list of the names of these individuals who have the appropriate certificate under the trade cannot be considered to be a record of their employment and educational history. We simply have a list of names of qualified individuals. That list can only tell us two things, if they have certificates of qualifications or certificates of apprenticeship in the construction electrician trade.

[20] There is no information being supplied with respect to their education, the trade schools they attended, the type of early apprenticeship they may have acquired in lieu of a trade school education. There is no indication if individuals were certified through any grandfathering provisions or if they were qualified in another jurisdiction. This is simply a list of names, indeed, there are no addresses or phone numbers for these individuals, supplied with the list.

[21] I particularly accept the representations made by the applicant, i.e. the use to which these list of qualifications would be put. That is to say, the list would be used in the interest of promoting public health safety by ensuring that only people who are qualified are performing the electricians' trade.

[22] I do not accept that this could be used for solicitation. Again, it bears no addresses and no telephone numbers, simply a list of names. I disagree with the respondent that the list if released to the IBEW, Local 625 could be used for a purpose other than its intended legislative purpose. It seems to me, it is what it is. It is a list of names of individuals who have either a certificate of qualification or the certificate of apprenticeship.

[23] This list is obviously maintained by the Department of Education to state the names of qualified individuals and I accept that the IBEW, Local 625 would have a legitimate interest in receiving this information that does not conflict with the stated aims of the legislation.

[24] The fact is now you can call and check on the qualifications of any individual by making an inquiry to the Department of Education. This fact weighed heavily in my decision to require that the Department of Education release this list to Mr. Griffiths.

[25] With respect to the expectations of privacy, I do not find that the named certified electricians would have any particular expectation of privacy in these circumstances. There is no privacy when a member of the public can now receive the information on an individual basis by making a call to the department. I do not accept the position advanced in Marjorie Davison's affidavit that she considered that the information was being provided on a confidential basis.

[26] The practical reality is that the individuals whose names appear on the list have the expectation that people will check on their qualifications. An employer can check, a member of the public can check. That is the very purpose of the list.

[27] Therefore as the fourth step, i.e. balancing the relevant circumstances and considering whether the presumption of privacy under s. 20(3) is rebutted, I find this disclosure will not constitute an unreasonable invasion of privacy. The applicant has met the onus placed on them pursuant to s. 45(2). I would order the Department of Education to disclose to the applicant the information requested, i.e. the current list of persons in possession of certificates of qualification in the construction electrician trade including the list of persons in the possession of certificates of apprenticeship.

[28] The cases cited by the respondent are distinguished on their facts. *Gatemaster Incorporated v. Nova Scotia (Department of Housing and Municipal Affairs),* [2000] N.S.J. No. 55 (N.S.S.C.); *Dickie v. Nova Scotia (Department of Health)* (1999), 176 N.S.R. (2d) 333 (N.S.C.A.); *O'Connor v. Nova Scotia (Minister of Planning Secretariat)* (2001), 197 N.S.R. (2d) 154 (N.S.C.A.); *Order PO-1691,* [1999] O.I.P.C. No. 89; *Re Cyril House and 1449900 Canada Inc., supra; Dagg v. Canada (Minister of Finance),* [1997] 2 S.C.R. 403; *Canada (Information Commissioner) v. Canada (Minister of Fisheries and Oceans),* [1989]

1 F.C. 66; and *Island Press Ltd. v. Prince Edward Island (Information and Privacy Commissioner),* [2004] P.E.I.J. No. 86 (T.D.).

[29] I would cite with the approval the *O'Connor, supra,* the decision in Nova Scotia wherein Justice Saunders comments on the purpose of the privacy legislation here in Nova Scotia. In para. 40 and para. 57 of that decision he discusses the balancing of the public's right to access versus the private interest of the individual and the scope of the legislation in this province relative to other provinces. There has been imposed a very positive obligation upon public bodies to accommodate the public's right to access subject to certain limited exceptions.

> 40 Thus, it seems clear to me that the Legislature has imposed a positive obligation upon public bodies to accommodate the public's right of access and, subject to limited exception, to disclose all government information so that public participation in the workings of government will be informed, that government decision making will be fair, and that divergent views will be heard.
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> 57 I conclude that the legislation in Nova Scotia is deliberately more generous to its citizens and is intended to give the public greater access to information than might otherwise be contemplated in the other provinces and territories in Canada. Nova Scotia's lawmakers clearly intended to provide for the disclosure of all government information (subject to certain limited and specific exemptions) in order to facilitate informed public participation in policy formulation; ensure fairness in government decision making; and permit the airing and reconciliation of divergent views. No other province or territory has gone so far in expressing such objectives.

[30] The provisions of the order will provide for a stay for a period of 30 days, to afford the public bodies or a dissatisfied third party an opportunity to appeal the decision of the Court of Appeal.

Justice M. Heather Robertson