

SUPREME COURT OF NOVA SCOTIA

Citation: Cummings v. Nova Scotia (Public Prosecution Service),
2011 NSSC 38

Date: 20110201
Docket: Hfx. No. 335079
Registry: Halifax

Between:

Wanda Cummings

-and-

Nova Scotia Public Prosecution Service

LIBRARY HEADING

Judge: The Honourable Justice Robert W. Wright

Heard: January 27, 2011 in Halifax, Nova Scotia

Written

Decision: February 1, 2011

Subject: FOIPOP appeal - Section 15(1)(f) exemption for documents relating to exercise of prosecutorial discretion - non-availability of Provincial FOIPOP Act to access RCMP generated documents.

Summary: The applicant applied for unrestricted access to the contents of two Public Prosecution Service (“PPS”) files, one pertaining to criminal charges laid against her in Provincial Court and the other to a subsequent proceeding before the Criminal Code Review Board. PPS disclosed parts of the files but withheld others, relying on the statutory exemption of documents pertaining to prosecutorial discretion. PPS also refused to disclose RCMP generated documents on the basis that access to those would have to be pursued through federal counterpart legislation. The applicant then appealed that decision directly to this court.

Issues:

- (1) Whether statutory exemption for documents relating to the exercise of prosecutorial discretion applied;
- (2) Whether RCMP generated documents are accessible under the provincial act;
- (3) Whether medical information pertaining to the applicant should be returned to her and expunged from the PPS files.

Held:

- (1) PPS was justified in withholding from disclosure those documents claimed to relate to the exercise of prosecutorial discretion under the exemption conferred by s.15(1)(f);
- (2) Requests for access to RCMP generated documents used in the criminal proceeding were outside the purview of the provincial act. Rather, any such request had to be made through the counterpart federal legislation;
- (3) The PPS files did not contain any medical or health information pertaining to the applicant with the exception of two mental health assessment reports prepared for use by the Provincial Court and the Criminal Code Review Board respectively. Those reports are, and remain, as part of the record of the Provincial Court and Review Board respectively and the Act provides no authority for their expungement from the PPS files.

**THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S
DECISION. QUOTES MUST BE FROM THE DECISION, NOT THE COVER
SHEET.**
