

CITATION: Corporation of the City of Waterloo v. Cropley and Higgins, 2010 ONSC 6522
DIVISIONAL COURT FILE NO.: 300/10 and 331/10
DATE: 20101125

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

HIMEL, SACHS and HARVISON YOUNG JJ.

BETWEEN:)
)
THE CORPORATION OF THE CITY OF) *David M. Steele and Michael A.*
WATERLOO) *van Bodegom, for the Applicant*
Applicant)
- and -)
)
LAUREL CROPLEY, Adjudicator in her) *William S. Challis, for the Respondent,*
capacity as a delegate of the Information and) Laurel Cropley, Adjudicator in her capacity
Privacy Commissioner, TERRY PENDER) as a delegate of the Information and Privacy
and BRIAN CALDWELL) Commissioner
Respondents)
) *Brian MacLeod Rogers, for the Respondents,*
AND BETWEEN:) Terry Pender and Brian Caldwell
)
THE CORPORATION OF THE CITY OF) *David M. Steele and Michael A.*
WATERLOO) *van Bodegom, for the Applicant*
Applicant)
- and -)
)
JOHN HIGGINS, Adjudicator in his) *William S. Challis, for the Respondent, John*
capacity as a delegate of the Information) Higgins, Adjudicator in his capacity as a
and Privacy Commissioner, and BRIAN) delegate of the Information and Privacy
CALDWELL) Commissioner
Respondents)
) *Brian MacLeod Rogers, for the Respondent,*
) Brian Caldwell
)
)
) **HEARD at Toronto:** November 25, 2010

HIMEL J. (ORALLY)

[1] The City of Waterloo applies for judicial review of orders made by two adjudicators acting as delegates of the Information and Privacy Commissioner of Ontario. One application concerns decisions of the respondent, Laurel Cropley and the other concerns a decision made by the

respondent, John Higgins. Both decisions raise similar issues and, as a result, it was agreed by the parties that these cases be heard together.

[2] The applicant, the City, takes the position that the Commissioners exceeded their jurisdiction in ordering the City to disclose records which it alleges are protected by solicitor/client privilege and are exempt from disclosure requirements under s. 12 of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.m.56.

[3] The respondent, the Information and Privacy Commission, takes the position that no jurisdictional error was made because the information sought, which was the total dollar amount of the City's legal bills, is not sheltered by the s. 12 exemption. The respondent journalists support the position of the IPC and ask that the applications for judicial review be dismissed.

[4] In both orders, the adjudicators ordered the City to disclose total dollar figures concerning legal services with no dates relating to when the services were charged and no details of the nature of the services rendered. Furthermore, the totals did not have to be disclosed in any particular sequence.

[5] All parties agree that the standard of review applicable to these applications is one of correctness. The arguments put before us by the applicant on this issue are the same arguments as those raised before the adjudicators. There is no suggestion in these arguments that the adjudicators misstated the principles of law applicable to their decisions – in particular, references to the leading decisions of the Supreme Court in *Miranda v. Richer*, [2003] 3 S.C.R. 193, the decision of the Ontario Court of Appeal in *Ontario (Attorney General) v. Ontario (Assistant Information Privacy Commission)* [2005] O.J. No. 941, and a decision of this Court in *Ontario (Ministry of the Attorney General) v. Ontario (Information and Privacy Commission)* [2007] O.J. No. 2769.

[6] The thrust of the applicant's submissions before us is that the adjudicators erred in failing to adequately consider certain hypothetical circumstances in which the applicant argues there will be a reasonable possibility that an assiduous inquirer, aware of the background information available to the public, could use the information to acquire communications protected by the privilege. The difficulty with this submission is that the hypotheticals have no application to the circumstances before the adjudicators in these cases.

[7] The adjudicators correctly decided that their role was to review the cases before them on their facts and not on inapplicable hypothetical scenarios which is in keeping with the Miranda decision and the cases that have followed it.

[8] For these reasons and for the excellent and thorough reasons set out by both adjudicators in their respective decisions, the applications for judicial review are dismissed.

[9] I have endorsed the Application Record, “The application is dismissed for oral reasons given by me on behalf of the Court. There is no order as to costs with respect to the IPC. With respect to costs of Pender and Caldwell, it is agreed that costs be fixed at \$7,500.00, payable by the City with respect to both applications.”

HIMEL J.
SACHS J.
HARVISON YOUNG J.

Date of Reasons for Judgment: November 25, 2010

Date of Release: December 10, 2010

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BETWEEN:

THE CORPORATION OF THE CITY OF
WATERLOO

Applicant

- and -

LAUREL CROPLEY, Adjudicator in her capacity
as a delegate of the Information and Privacy
Commissioner, TERRY PENDER and BRIAN
CALDWELL

Respondents

AND BETWEEN:

THE CORPORATION OF THE CITY OF
WATERLOO

Applicant

- and -

JOHN HIGGINS, Adjudicator in his capacity as a
delegate of the Information and Privacy
Commissioner, and BRIAN CALDWELL

Respondents

ORAL REASONS FOR JUDGMENT

HIMEL J.

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