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Victory claimed in secrecy case

By Bob Bragg
(Herald staff writer)

Some police files on Canadian citizens may have been wrongly classified as secret by an invalid cabinet order, says Calgary civil rights lawyer Sheldon Chumir.

In a surprising legal twist in the case of Chumir's client, former Calgary political activist Nick Ternette, the federal Solicitor General's Department has conceded in a letter that at least one complete bank of files had been declared "exempt" from public access by an invalid order-in-council, says Chumir.

There are 19 banks of data the cabinet declared exempt from public access under the Privacy Act.

"It's a major development," Chumir said in an interview. "The bank (P-130) is not validly exempt and it is possible that other exempt banks may suffer from the same defect."

The files in P-130 had not been reviewed before being classified exempt to see if their release would harm national security or law enforcement as required by the act, Chumir said.

Chumir interpreted the government's admission to mean that the government cannot keep files from the public unless it does examine them and establish that some harm would be done, for example to national security or law enforcement.

The data bank P-130 is described in the Index to the Privacy Act as containing "personal information on individuals who may be engaged in or may be planning to engage in espionage

or sabotage; foreign intelligence activities directed toward gathering intelligence information relating to Canada" and includes "terrorist act(s), hijackings, force, violence or any other criminal means."

Originally under RCMP jurisdiction, the data bank now falls under the Canadian Security and Intelligence Service.

Ternette, a 40-year-old freelance journalist and civic political activist, has been attempting for two years to gain access through the Privacy Act to any file that may have been kept on him under the P-130 data bank.

The government, which refuses to confirm or deny that a file on Ternette even exists, has refused access and forced Ternette to seek a ruling on the matter in Federal court.

In June 1984, Federal Court Judge Barry Strayer ruled that the court had the right to review the file (if it existed) to find out if it was properly placed in the exempt bank category.

Since that ruling, a lengthy legal procedure has ensued aimed at arriving at a ruling from Associate Chief Justice James Jerome.

Jerome has yet to rule, but the legal question raised by Chumir about the validity of the order in council exempting the bank from access seems to have been resolved in Ternette's favor.

"It's a significant civil libertarian victory," Ternette said Wednesday in a telephone interview from Winnipeg.

"I'm elated and I'm surprised.



Nick Ternette

The admission that the order-in-council (cabinet order) is illegal is an amazing admission," he said.

But Ternette and Chumir say that the admission may not necessarily give Ternette access to his hypothetical file.

Jerome will still have to look at the file "if there is one," to determine if some, none or all of it can be released, Chumir said.

The government may still find ways of keeping the files in P-130 inaccessible to the public by relying on other sections of the Privacy Act, he added.

Genevieve O'Sullivan, press secretary for the Justice Department, confirmed in a telephone interview from Ottawa Wednesday that the department still regards the files as inaccessible under other sections of the act.

However, Ternette says he plans to pursue the political implications of the government's admission.

"If the order (of cabinet) is illegal then it's possible the whole of the Privacy Act is illegal," Ternette said, adding that he has asked Winnipeg North Centre MP Cyril Keeper to raise the issue in the Commons.