



Department of Justice
Canada
Ottawa, Canada
K1A 0H8

Ministère de la Justice
Canada

SEP 24 1985

(613) 992-8279

Room 536, Justice Building
Kent and Wellington Streets

September 20, 1985

Sheldon M. Chumir Professional
Corporation
Ste. 280 - 521 Third Avenue South
West
Calgary, Alberta
T2P 3T3

Attention: Sheldon M. Chumir

Dear Mr. Chumir:

Re: Nick Ternette v. The Solicitor General of
Canada, Court file no. T-522-84

I write to you to set out the Respondent's position with respect to the above-noted matter. On June 7, 1985, Mr. Justice Jerome agreed to your request for the trial of an issue as to whether Order-in-Council P.C. 1983-1232 was validly enacted so as to properly constitute Personal Information Bank RCMP-P130 as an exempt bank pursuant to section 18 of the Privacy Act.

You take the position stated by Mr. Justice Strayer in his decision that all of the files in a bank must consist predominantly of personal information described in section 21, and that the existence of that fact is a precondition to the authority of the Governor-in-Council to designate the bank as exempt.

I have previously advised you that there is no evidence that all of the files in the bank in question were examined in order to ascertain whether or not they met the test prior to the enactment of the Order-in-Council. The Crown has no other evidence that all of the files in this particular bank met the test set out in section 18, and accordingly I am instructed to advise you that the Respondent is prepared to concede that Order-in-Council P.C. 1983-1232 was not validly enacted.

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However, the Solicitor General takes the position that he is nevertheless not required to indicate whether personal information about Mr. Ternette exists in Bank RCMP-P130, but that if information exists a refusal could reasonably be expected to be based on section 21 of the Privacy Act.

Under the circumstances, the trial of an issue regarding the validity of the Order-in-Council is unnecessary and I would propose that we agree to the following procedure which would then be incorporated in a consent order:

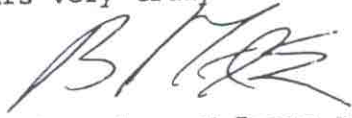
1. In accordance with Mr. Justice Strayer's Order of June 29, 1984, an affidavit was filed with the Court on December 20, 1984. I would propose that that affidavit be returned to the Respondent and that a new affidavit be filed, on the same terms, addressing the issues of the existence of any personal information about Mr. Ternette in RCMP-P130, and whether, if such information exists, the Solicitor General has reasonable grounds on which to refuse to disclose the information pursuant to section 21.
2. The Court's review of the matter will then proceed under section 51 of the Act, in camera, and the Court will be required to review the authority of the Solicitor General to refuse to disclose any information which may exist in accordance with section 49.
3. In accordance with the procedure followed in Reyes v. The Secretary of State (T-392-84, December 21, 1984), a hearing would be held, in Calgary if you wish, for the purpose of allowing you to make submissions and to suggest specific questions which should be directed to the Deponent of the affidavit.

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4. We would then hold a further hearing at which ex parte representations would be made on behalf of the Solicitor General, and the Court would examine the affidavit and, if necessary, the Deponent. This latter hearing would more conveniently be held in Ottawa.

If this procedure meets with your approval, please let me know and I shall prepare the appropriate consent order and explanatory letter for delivery to the Court.

Yours very truly



(Mrs.) Barbara McIsaac,
Counsel,
Civil Litigation Section.

BM:rn

c.c.--Deputy Minister