Privacy Interest in Employment Records

On July 5, 2007, the Supreme Court of Canada agreed to hear an appeal of Attorney General of Ontario, 3rd Party Record Holder v. Lawrence McNeil et al. [1]. The accused, Lawrence McNeil, was convicted with various drug-related offenses in 2004. He launched a lawsuit to obtain records detailing the alleged criminal misconduct and drug-related activities of his arresting police officer. The officer was addicted to cocaine when he arrested McNeil. McNeil hoped that the records would provide him with fresh evidence to dispute the charges by bringing into question the officer's credibility and his motive for approaching McNeil prior to his arrest [2].

The Ontario Court of Appeal held that the records should be disclosed to McNeil. Central to the Court's decision was the connection between McNeil's drug-related charges and the police officer's cocaine addiction. Moreover, since the "records [were] created in the course of a criminal investigation that resulted in criminal charges" and were not employment records, the Court held that the police officer had no reasonable expectation of privacy in them. However, the Court pointed out a discrepancy in the case law regarding the correct legal procedure to be used when determining "when a police officer has a reasonable expectation of privacy in employment records" [3].

The Crown has an obligation to provide information from police investigations to an accused. On an appeal (as opposed to during a trial), "the Crown's disclosure…must extend to any information in the possession of the Crown that there is a reasonable possibility may assist the accused in the prosecution of his or her appeal" [4].

Sources:

[1] Attorney General of Ontario, 3rd Party Record Holder v. Lawrence McNeil et al, [2006] O.J. No. 4746.
[2] Ibid. at para. 49.
[3] Ibid. at para. 124.
[4] Ibid. at para. 41.