



## **BACKGROUND FACTS**

[2] Mr. Tadros was born in Cairo, Egypt. He is 67 years of age and at present resides in the Town of Pickering, in the Region of Durham. He holds the following degrees:

- (a) Degree in Theology and Social Services from Cairo University in 1973;
- (b) Diploma in Social Services from St. Francis Xavier University in 1982;
- (c) Bachelor of Law from Cairo University in 1984.

[3] After practicing law in Cairo for about four years, he emigrated to Canada arriving here on August 11, 1988. His first position here was with the Metropolitan Toronto Separate School Board, as an assistant for high school students with special needs in Scarborough. At the same time, he found employment providing counseling services to persons with cognitive limitations through the North York organization known as Christian Horizon Organization. He continued work with both of these employers until 1997, when he opened a group home in the City of Mississauga. A year later, he opened a group home for children in Mississauga near the intersection of Winston Churchill Boulevard and Britannia Avenue under the name "Better Future for Children". In order to operate such an establishment, he was required to obtain a license from the Ontario Ministry of Social Services, which he did. This was a home for about six children who were looked after by staff, hired by Mr. Tadros.

[4] Around May 22, 2002, Mr. Tadros was charged by the Peel Police Service with four counts of sexual assault, and four counts of sexual exploitation. This apparently was based upon allegations made by the children who were residents in his group home. He maintains that the allegations were entirely false.

[5] When the matter finally came on for trial on October 30, 2003, all eight of these charges were withdrawn at the request of the Assistant Crown Attorney. On the same date, Mr. Tadros, presumably in order to see the charges disposed of in his favour, entered into and signed a peace bond. The terms of the bond read as follows:

THE QUEEN

Applicant

and

MADGY TEDROS

Respondent

AN ORDER PURSUANT TO THE COURTS COMMON LAW  
PREVENTATIVE JUSTICE POWER.

WHEREAS the applicant has requested the imposition of an order requiring the respondent to keep the peace and be of good behavior pursuant to the Courts Common Law preventative justice power;

AND WHEREAS the Court has heard evidence and allegations relevant thereto and submissions from the applicant and the respondent;

AND WHEREAS the respondent having acknowledged sufficient of the allegations, consents to such an order and waives the hearing of further evidence herein and concedes that probable grounds exist for the granting of the order sought;

AND WHEREAS the Court has probable grounds to suspect further misbehavior by the respondent likely to give rise to breach of the Queen's Peace.

THEREFORE THIS COURT DOES ORDER the Respondent, Magdy Tadros to keep the peace and be of good behavior generally for a period of nine months from the date of the making of this order.

Additionally the respondent shall abide by the following terms and conditions for the term of this order:

Not to be in the company of any person under the age of 14 years unless in the company of an adult over 21 years except for family members.

Order made this 30<sup>th</sup> day of October, 2003 at Brampton, Ontario

“H.K. Atwood”  
Ontario Court of Justice

[6] Mr. Tadros, who has never been convicted of a criminal offence and who continued to maintain his innocence at the hearing, complied with all of the terms and conditions of the bond. In about August 2004, after the nine-month period had expired, Mr. Tadros applied to the Ministry of Social Services for a group home license so that he could reopen the group home he was operating earlier. He received no response to this application.

[7] In early November 2004, the applicant applied for a job as a group home worker with Community Living Oshawa/Clarington in Oshawa, Ontario. He received a letter from his perspective employer confirming that they had requested a criminal reference check, including the screening for working with vulnerable people, and would not proceed with his application for employment until that document was received.

[8] Although no mention is made in Mr. Tadros's affidavit of any consent to the release of any such information being sought from him to be given to the police force, counsel for the Peel Police Service argued that it was the practice of that force to advise the subject matter of the inquiry and that a request had been made for it. A waiver would have been sought from Mr. Tadros to allow the release of such information. The Peel Police Service (and presumably the Toronto Police Service) does not keep the applications for this type of information for more than one year. Accordingly, only one example of the necessary release in blank from the Toronto Police Service was filed. Its heading and text is as follows:

POLICE REFERENCE CHECK PROGRAM

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CONSENT TO DISCLOSURE OF PERSONAL INFORMATION

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TO BE USED ONLY TO ASSIST THE AGENCY TO DETERMINE THE SUITABILITY OF SUCCESSFUL CANDIDATES FOR EITHER FULL OR PART-TIME EMPLOYMENT AND/OR VOLUNTEER DUTIES (INCLUDING AGENCY BOARD MEMBERS AND CONTACT MEMBERS) HAVING DIRECT CONTACT WITH CHILDREN OR VULNERABLE PERSONS.

After providing a space in which the subject of the inquiry was to fill in his/her name and give other pertinent information, the document goes on to read:

WAIVER & RELEASE

I HEREBY REQUEST THE TORONTO POLICE SERVICE TO UNDERTAKE A POLICE REFERENCE CHECK ON ME BY SEARCHING THE APPROPRIATE DATA BANKS BOTH, NATIONAL AND LOCAL, TO WHICH THE SERVICE HAS ACCESS, AND PROVIDE ME WITH A SUMMARY OF ANY INFORMATION REVEALED PURSUANT TO THE POLICE REFERENCE PROGRAM. IN THE EVENT NO INFORMATION ABOUT ME IS FOUND AS PART OF THAT CHECK, I CONSENT TO THE TORONTO POLICE SERVICE DISCLOSING THAT FACT TO THE ORGANIZATION IDENTIFIED BELOW. IN THE EVENT THAT PERTINENT INFORMATION IS PROVIDED TO ME, I CONSENT TO THE TORONTO POLICE SERVICE DISCLOSING THAT FACT TO THE ORGANIZATION IDENTIFIED BELOW.

I ALSO CONSENT TO A SEARCH BEING MADE IN THE AUTOMATED CRIMINAL RECORDS RETRIEVAL SYSTEM MAINTAINED BY THE RCMP TO FIND OUT IF I HAVE BEEN CONVICTED OF AND BEEN GRANTED A PARDON FOR ANY OF THE SEXUAL OFFENCES THAT ARE LISTED IN THE SCHEDULE TO THE CRIMINAL RECORDS ACT. IF I AM SUSPECTED AS BEING THE PERSON NAMED IN THE CRIMINAL RECORDS FOR ONE OF THE SEXUAL OFFENCES LISTED IN THE SCHEDULE TO THE CRIMINAL RECORDS ACT IN RESPECT OF WHICH A PARDON WAS GRANTED OR ISSUED, I WILL BE REQUESTED TO PROVIDE FINGERPRINTS TO CONFIRM THAT RECORD AND THAT RECORD MAY BE PROVIDED BY THE COMMISSIONER OF RCMP TO THE SOLICITOR GENERAL OF CANADA, WHO MAY THEN DISCLOSE ALL OR PART OF THE INFORMATION CONTAINED IN THAT RECORD TO THE TORONTO POLICE SERVICE OR OTHER AUTHORIZED BODY. I UNDERSTAND THAT THE TORONTO POLICE SERVICE WILL THEN DISCLOSE THAT INFORMATION TO ME AND THE AGENCY FOR VIEWING AS PART OF THE DETERMINATION AS TO MY SUITABILITY FOR THE POSITION I AM APPLYING FOR.

There follows beneath that a place for the agency to be identified and the signature of the applicant, of a witness to that signature and a date. Following that, these words appear:

Personal information on this form is collected and disclosed pursuant to the Police Services Act, the Municipal Freedom of Information and Protection of Privacy Act and the Criminal Records Act and will be used to disclose personal information only to the persons or agencies so designated by the written consent of the applicant. Questions should be directed to the Police Reference Check Program (416) 809-7991. Mail to the Toronto Police Service, 40 College Street, Toronto, Ontario M5G 2T3. This information may or may not pertain to the subject of this inquiry. Positive identification can only be confirmed through submission of fingerprints.

[9] As stated earlier, Mr. Tadros, in his affidavit material, does not deal at all with any form of waiver signed by him. The respondent, The Peel Police Service maintains that in following this procedure, it does not seek a blanket waiver covering any and all requests for information, but a waiver on each and every occasion where a request is made of the service for such information. Mr. Tadros's affidavit indicates that not only was his application for employment at Community Living Oshawa/Clarington rejected, but a position for which he had been tentatively employed as

a counselor with Peel/Halton Acquired Brain Injury Service was similarly rejected. In his material, he states that he was so advised by representative of that organization, and that they based their decision on the information received from the Police Reference Check Search from the Toronto Police Service. It contained information which appeared to have been obtained from the Peel Police Service. He obtained further employment with the Meta Centre in North York, but this was terminated on April 25, 2005 “without cause”. Mr. Tadros’s affidavit simply indicates that he received information indicating that the Meta Centre had obtained a similar police reference check, which listed the eight withdrawn charges. As a result of such information, the Meta Centre terminated Mr. Tadros’s employment “effective on about April 25, 2005.” This police disclosure lists the eight charges and indicates that all charges were withdrawn. This is in contrast to what is referred to in a Toronto Police Service letter to the Chief of Police dated April 24, 2006, which reads as follows:

Re: Tadros, Magdy Abdelmalik (d.o.b. 1951.02.25)

Please be advised that the search based on the above name and date of birth failed to disclose any such person with a record of criminal conviction(s) in the Canadian Police Information Centre (CPIC) Database, which is the national repository of criminal records.

“C. Blair”

Co-coordinator,       Records  
Management         Services  
Information Access

There is, however, a note at the bottom of this letter which reads as follows:

NOTE: This screening is not the most appropriate for individuals being employed and/or volunteering with \*Vulnerable Person(s). A more comprehensive process is available through the Police Reference Check Program. Please contact the program co-coordinator at (416) 809-7991 for more information.

At the bottom of the page, in smaller print, the words “Vulnerable Person” is defined as:

VULNERABLE Person means a person who because of their age, disability or other circumstances, whether temporary or permanent, are (a) in a position of dependence on others; or (b) are otherwise at a greater risk in the general population of being harmed by a person in a position of authority or trust relative to them.

[10] It was suggested by counsel for the respondent police service that a waiver addressed to the relevant police force authorizing it to disclose information was signed by Mr. Tadros on each occasion that this information was sought by a prospective employer. This, of course, is based

upon the affidavit material filed by the responding police service indicating that this is their regular procedure. I would have thought that if Mr. Tadros did sign such waivers, he would have remembered doing so. Mr. Tadros, in his affidavit, goes on to say that he made a number of other applications for employment in social service agencies and all have been rejected. The conclusion seems unavoidable that social service work for which he was trained and in which he has considerable experience is closed to him because of the retention and more particularly the dissemination of the information about the eight sexual assault charges which were subsequently withdrawn. It is these references which the applicant seeks to have expunged from his record with the police.

## RELEVANT LEGISLATION

[11] The connection, retention and disclosure of personal information referring to the applicant in this case appears to have its basis in existing legislation. The connection of information by the police for “*law enforcement*” is specifically authorized by the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M, 56, sec. 28-29 (“MFIPPA”). This includes information on the “conduct of proceedings” in a matter related to law enforcement purposes. The collection of this information is also authorized by the provisions of the *Police Services Act*, R.S.O. 1990, c. P.15. The retention of this type of information by the Peel Police Service Board is also based on Peel Region By-Law No. 25-96, which was approved by Regional Council on April 25, 1996. This was passed pursuant to the authority given to it by the MFIPPA. The By-Law itself appears as a schedule to the Act and is set out in a somewhat abbreviated form listing all aspects of police work and dividing the various subjects into columns, three of which are headed “Subject”, “Description” and “Minimum Retention.” Item 56 refers to “Occurrences.” Subject matter is listed as an “Occurrence file”. “Occurrence” is described in the next column as “an Occurrence is the formal report of an incident as described below.” The Report is submitted either in writing or by means of electronic data entry and is retrieved by the assigned incident number. No time is given for minimum retention for occurrences. Beneath that is “Incident File”. Incident is defined as “a situation which comes to the attention of a member of the Force by any means, including calls from the public. It requires some police action in the form of a response or the recording of information for reference purposes. Each incident is given a yearly consecutive number for retrieval purposes.” Minimum retention time is listed as “5A plus indefinite with selective purging.” This would appear to be applicable to the charges laid against Mr. Tadros.

[12] The *Criminal Records Act*, R.S.C. 1985, c. C-47 and the *Criminal Code*, R.S.C. 1985, c. C-46 both contain provisions which relate to the retention of records. The *Criminal Records Act* deals with the records of convictions for which pardons have been granted. These must be kept separate from other criminal records. It applies to custody of the records by departments or agencies of the Government of Canada. This Act also deals with discharges. If an individual has been discharged under s. 730 of the *Criminal Code*, that record must be removed from the automated criminal conviction records retrieval system maintained by the RCMP up to the time limits and the *Criminal Records Act* has been satisfied (s. 6.1). The *Criminal Code* has

provisions that appear under Part XXIII – SENTENCING, but they relate only to individuals who have been dealt with under the alternative measures regime (ss. 32(d)).

[13] It would appear that authority for the disclosure of information is provided for primarily by the MFIPPA and the *Police Services Act*. The MFIPPA contains specific provisions on the uses of personal information by the institution which initially collected it (s. 31) and the conditions under which it can be disclosed (s. 32). Of relevance here is that the consent of the individual to whom the information relates must identify the information “in particular” and consent to its disclosure (ss. 32 (b)). It is also permissible for it to be used for disclosure to occur between law enforcement institutions (ss. 32 (f)). The *Police Services Act* has a specific disclosure provision that allows for disclosure in accordance with the regulations made under the Act (ss. 41(1.1)), provided that its purpose aligns with those specified in the *Police Services Act* itself (ss. 41 (1.2)).

[14] Section 31 of the MFIPPA provides as follows:

An institution shall not use personal information in its custody or under its control except,

- (a) if the person whom the information relates has identified that information in particular and consented to its use;
- (b) for the purpose for which it was obtained or compiled or for a consistent purpose; or
- (c) for a purpose for which the information may be disclosed to the institution under s. 32 or under s. 42 of the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, chap. M.56 s. 31.

[15] Section 32 of the Act, under the heading “*Where disclosure permitted*” reads as follows:

An institution shall not disclose personal information in its custody or under its control except,

- (a) in accordance with Part I;
- (b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;
- (c) for the purpose for which it was obtained and compiled for a consistent purpose;

- (d) if the disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and if the disclosure is necessary and proper in the discharge of the institution's functions;
- (e) for the purpose of complying with an Act of Legislature or an Act of Parliament, an agreement or arrangement under such an Act or a treaty;
- (f) if disclosure is by a law enforcement institution,
  - (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority; or
  - (ii) to another law enforcement agency in Canada;
- (g) if disclosure is to an institution or a law enforcement agency in Canada to aid in investigation undertaken with a view of law enforcement proceeding or from which a law enforcement proceeding is likely to result;

...

[16] The *Criminal Records Act* and the *Criminal Code* both contain disclosure provisions as well, although both pertain to situations where the person charged is either being convicted or dealt with under alternative measures. The *Criminal Records Act* is concerned primarily with pardoned convictions and provides that the convictions for which a pardon has been granted will only be disclosed if they fall under the "Vulnerable Persons" regime set out in the Act. The *Criminal Code* again contains disclosure provisions, but again these relate only to those situations dealt with under alternative measures (s. 717.4).

[17] Even assuming that Mr. Tadros did, as suggested by counsel for the respondent police service, sign a consent and waiver to the release of information on each occasion it was asked for, it might be suggested he did so without knowledge that that information would contain charges which had been withdrawn at the instance of the crown. It is noted that in both sections 31 and 32, referring to the information sought, it is required "that information in particular" has been identified by him before it is consented to and released. In my view, Mr. Tadros, having no police record of convictions in any court of criminal jurisdiction in this country and having been charged with eight offences which were withdrawn at the request of the crown, might well expect that this information was not contained in the police records or at least would not be disclosed. The request for this information and its subsequent release does not appear to have been in accordance with any of the subsections of s. 32 of the MFIPPA.

[18] Several statutes deal with the keeping of records and the argument is made that the records so kept, whatever the disposition of a criminal complaint or charge, could well serve in the subsequent investigation of subsequent offences. Substantial medical, psychiatric and psychological evidence was placed before the court by the Attorney General. In my view, this bolsters this thought and suggests that the keeping of such records is or can be of vital importance to law agency for investigative purposes. The special attention given to the applicability of records to “Vulnerable Persons” indicates a desire on the part of legislators to want to take specific care to maintain full records for investigative purposes. This gives a wider latitude to the police in cases involving those who work with children or other vulnerable persons, but only for that purpose.

[19] It is important to note a portion of a directive circulated within the RCMP entitled “Release of Criminal Record Information. Ministerial Directive on the Release of Criminal Record Information by the Royal Canadian Mounted Police.” On page 802, a revised directive as of September 2003 reads:

The disclosure of criminal records, which contain only discharges under Section 730 of the *Criminal Code* and/or non-convictions, in certain circumstances may have adverse consequences on an individual’s reputation, employment, mobility or access to services. Accordingly, caution must be exercised when disclosing these records in connection with non-criminal inquiries, especially border crossings. It must be remembered also that the records of Young Offenders can only be disclosed in accordance with the provisions of the *Youth Criminal Justice Act*.

## **APPLICANT’S POSITION**

[20] Counsel for the applicant argues that there is no legislative authority for any police service to retain records of charges which were subsequently withdrawn. For example, s. 2 of the *Criminal Records Act*, S.C. 2000, chap. 1 provides in paragraph 2(d) that a police force or other authorized body has authority to verify where the applicant is a subject of a notation made in accordance with ss. 6.3(2) of the *Act*. Such information in the records of the force must contain:

- d. A statement that the applicant understands that, as a result of giving the consent when:
  - (i) a record of any conviction of the application for a sexual offence listed in the schedule to the Act shall be provided by the Commissioner of the Royal Canadian Mounted Police to the Minister even though pardon has been granted or issued for the offence.

- (ii) the Minister may disclose all or part of the information contained in a record to a police force or other authorized body; and
- (iii) the police force or authorized body shall disclose the information to the applicant and with the consent in writing of the applicant disclose it to the person or organization that requested the information.

No mention is made of any situations where the concerned person was charged and the charges were subsequently withdrawn.

Dealing with the form of the consent to be signed by the subject of the inquiry, this *Act* provides:

3.1(1) For the purpose of subsection 6.3(7) of the *Act*, a consent in writing referred to in that subsection must contain the information referred to in paragraph 2 (1)(a)(ii)(c) and a statement that the applicant understands that as a result of giving a consent, information contained in a record of any conviction of the applicant for a sexual offence listed in the schedule in the *Act* shall be disclosed by a police force or other authorized body to the person or organization referred to in that subsection even though a pardon has been granted and issued for the offence.

[21] It is not questioned that police authorities have the right to retain records of convictions. However, it does not appear that a similar right of retention and dissemination has been granted to the police authorities where the charges were withdrawn. Counsel for the Attorney General argued that while the withdrawal of the charges and the signing of a peace bond do not constitute a conviction, it was sufficiently similar that the police service was entitled to keep and disseminate the records it had. I do not accept this argument, even though if one looks at the charge sheet in the police service records, one will notice that the eight charges are listed in order, one under the other, and after the first, the following notation appears:

Sentenced Dec w/d peace bond 9 months

I do not regard what transpired with Mr. Tadros as a conviction and any rules governing the retention of criminal convictions do not apply to him as a result. I am re-enforced in this view when I read the transcript of the proceedings of October 30, 2003 against Mr. Tadros. It reads, in part, as follows:

MR. HALBERSTADT (DEFENCE COUNSEL): Yes. I just want to indicate for the record, your Honour, that the reason why

the matter is being dealt with the way it is is because my client does not acknowledge the facts as alleged in the information.

THE COURT: Right

MR. HALBERSTADT: And based upon the information that I supplied the crown as a result of my investigation ... form the opinion that there was less than minimum outside a possibility of conviction, not even *de minimis*. So ...

THE COURT: I have never heard anything quite so minimal. Very good. Are you both content? Nine months common law peace bond, two terms, keep the peace and no contact.

MR. HALBERSTADT: Yes, that's right.

[22] There can be no question that police services are authorized to and indeed do collect information about individuals, including what is described in legislation as “personal information.” If one considers the definition of personal information contained in s. 2 of MFIPPA it refers to “race, national ethic or origin, colour, religion, age, sex, sexual orientation, or marital or family status ...” It also includes opinions or views of the individual, the views or opinions of other individuals about that person, and the person’s medical, psychiatric, psychological, criminal or employment history. In this application, none of the relevant pieces of legislation were attacked and people unfamiliar with the legislation might be forgiven for being surprised at the breadth of information police services are authorized to maintain. I conclude, however, that the maintaining of information that charges have been laid, albeit subsequently withdrawn, is not in any way prohibited by legislation. On the other hand, I see nothing in any legislation which authorizes the release of information reporting that the subject of the inquiry was charged with sexual offences, which were subsequently withdrawn. The release form, which may or may not have been signed by Mr. Tadros, is not sufficiently specific in its terms to encompass this particular eventuality, and Mr. Tadros could be excused for assuming that at the time the application was made for the information, he had no record of any sort and need not be concerned about any adverse effect which might result on his employment prospects. There is a basic unfairness in the dissemination of this type of information as evidenced by the apparent effect it did have on his employment chances. It may well be that legislation did not deal specifically with withdrawn charges in recognition of the unfairness of the adverse effect of disseminating this information. In any event, the present practice of the police service in dealing with information about withdrawn charges seems to be based not upon any statutory provision, but upon customs and internal policy.

## CHARTER ISSUES

[23] The applicant alleges that the retention of records referring to the eight withdrawn charges in documents retained by the Peel Police Service is unconstitutional. He first makes a set

of claims regarding the privacy interests inherent in the records relating to withdrawn charges. He then argues that the Peel Police Service practice of retaining and referring to the withdrawn charges constitutes a violation of his guaranteed Charter Rights under sections 7, 11(d), and 15(1).

### *Privacy Interests*

[24] The applicant submits that the withdrawn charge information is of such a nature that it is within the reasonable expectation of the individual to whom such information relates that this information would remain confidential. For support, the applicant has directed the Court to the authorities of *R. v. Plant* (1993) 84 C.C.C. (3d) 203, *R. v. Dymont* [1988] 2 S.C.R. 417, and *Canada (Director of Investigation & Research, Combines Investigation Branch) v. Southam Inc.* [1984] 2 S.C.R. 145. He also argues that individuals have a remaining privacy interest with respect to the retention and use of such information and its retention and use after disposition of the charge is unconstitutional. For these propositions he relies on *R. v. Dore* 166 C.C.C. (3d) 225 (Ont. C.A.).

[25] The applicant's claim is based on the retention and use of information related to the eight withdrawn charges. The authorities he seeks to rely upon to ground his reasonable expectation of privacy all deal with claims of unreasonable searches and seizures under s. 8 of the Charter. Justice La Forest, speaking for a unanimous Supreme Court in *R. v. Beare*, [1988] 2 S.C.R. 387, did express "considerable sympathy" for the proposition that s. 7 includes a right to privacy similar to that inhering in the guarantee against unreasonable searches and seizures in s. 8 (at para 61). In the context of s. 8, the Supreme Court has recognized that its purpose is to protect against the state's intrusion on an individual's privacy (*Plant, supra*, at para 23). Furthermore, the Court has found that s. 8 protects "a biographical core of personal information" that would reveal "intimate details of the lifestyle and personal choices of the individual" that persons would wish to maintain and restrict from dissemination to the state (*Plant, supra*, at para 27).

[26] The analysis of privacy interests must always take into account, as re-iterated by the Court in *Beare*, that the guarantee is of a "reasonable expectation" of privacy, not an absolute one (*supra*, at para 61). Justice La Forest went on to state that "a person who is arrested on reasonable and probable grounds that he has committed a serious crime ... must expect a significant loss of personal privacy" (*Beare, supra*, at para 62). It is the context that determines the reasonableness of the expectation of privacy (*R. v. Jarvis*, [2002] 3 S.C.R. 757, at para 64).

[27] The Court of Appeal in *Dore* found that "anything associated with one's body, especially where it is not something that is otherwise normally accessible, is of a personal and confidential nature and is the type of information that people expect to be able to control and keep private in the ordinary course" (*supra*, at para 53). The concern expressed in *Dore*, similar to that in *Dymont* (that dealt with blood samples), was with respect to evidence or information that is otherwise not available but from the individual him or herself and the state compelled its production.

[28] The applicant's arguments with respect to protections of privacy interests does not disclose a basis for finding the retention of the impugned information unconstitutional. He has not made out how the particular context (*i.e.* historical records made pursuant to police investigations and criminal proceedings) is to be factored into the "reasonableness" of his expectation of privacy. Furthermore, there is a distinction to be drawn between historical records and state compelled information taken from one's body. His submissions in this context do not necessarily lead to a finding of equivalency between the retention of fingerprints and the retention of historical records.

*Section 7*

[29] The analysis of s. 7 begins first with finding there has been a deprivation of the right to “life, liberty and the security of the person” and then moves to consider whether that deprivation is contrary to the principles of fundamental justice (*Beare, supra*, at para 28).

[30] The applicant has argued that the rights of liberty and security of the person embodied in this section also include a generalized right to dignity, and specifically, a right to be free from the stigma associated with a withdrawn charge. However, the Supreme Court of Canada has explicitly stated that dignity and reputation, as well as freedom from stigma, are not “self-standing rights” (*Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307, at paras 78-80). The notion of “dignity” remains an underlying Charter value, as does respect for a person’s reputation (*Blencoe, supra*, at paras 78-80). These underlying values have not been recognized as independent rights. The applicant’s claim for loss of human dignity and self-respect thus cannot stand alone as constituting deprivations of his legal right to “liberty.”

[31] The applicant has also referred to “perpetual rejection when seeking employment in his field” and has speculated that when prospective or past employers have received information about the eight withdrawn charges, this has occasioned the rejection. While the applicant has led no specific evidence on this point, even if it was accepted that the speculated link was supported by the record, s.7 is still not engaged. The Supreme Court has held that s.7 is intended to protect decisions that affect a person’s “fundamental being” and the ability to make “essential life choices” (*Blencoe, supra*, at para 86). Section 7 does not include an individual’s right to be employed in his or her chosen profession (*Blencoe, supra*, at para 86) nor does it protect the right to generate business revenue by one’s chosen means (*Siemens v. Manitoba (A.G.)*, [2003] 1 S.C.R. 6, at para 46).

[32] The applicant has further argued that reference to the charges has deprived him of his right to “security” reflected in the protection of an individual’s psychological integrity. The Supreme Court has indicated that it is when an impugned state action has a “serious and profound effect on a person’s psychological integrity” that a restriction of security of the person may be made out (*New Brunswick (Minister of Health) v. G.(J.)* [1999] 3 S.C.R. 46, at para 60). The effects of the interference are examined objectively. Mr. Tadros has asserted a deprivation of security because of the alleged effects on his psychological integrity that he personally attributes to state action, but he has failed to provide any basis on which this could be analysed further.

[33] Based on the applicant’s submissions regarding an alleged breach of his s.7 rights, it is difficult if not impossible to find that there has been a deprivation of his right of life, liberty, or security of the person. Having found that the applicant’s allegations do not constitute deprivations of the rights protected by s.7, it is unnecessary to inquire into whether the actions have been undertaken in accordance with the principles of fundamental justice.

*Section 11(d)*

[34] The applicant claims that the continued retention and use of records referencing his withdrawn criminal charges in documentation requested by Mr. Tadros to obtain employment in his field, deprives him of his legal right to be presumed innocent which is guaranteed by s.11(d) of the Charter.

[35] The presumption of innocence is indeed a principle lying at the heart of criminal law and is meant to protect the fundamental liberty and human dignity of persons accused of criminal conduct by the State (*R. v. Oakes*, [1986] 1 S.C.R. 103, at para 29). However, the section is to be interpreted narrowly in the sense that it is related to criminal and penal proceedings (*R. v. Wigglesworth*, [1987] 2 S.C.R. 541, at paras 17-19). The rights are guaranteed to those facing the “prosecutorial power of the State” and who are at risk of suffering deprivation of liberty or facing true penal consequences (*Wigglesworth, supra*, at para 20). The withdrawal of charges has the effect of ending proceedings (*R. v. Leonard*, 133 C.C.C. 230 (Alta S.C.), at para 12, aff’d (1962) 133 C.C.C. 262 (Alta. C.A.)). At that point, the individual can no longer be considered at risk of the consequences that s.11(d) seeks to prevent.

[36] While Mr. Tadros was, at one time, the subject of proceedings to which there was the risk of deprivation of his liberty and true penal consequences, that is no longer the case. His assertion that the rights in s.11(d) attach to an individual after such proceedings have terminated appears to run contrary to the interpretation given to the right. Once the Crown withdrew the charges in October 2003, he ceased to be the subject of proceedings that put his liberty at stake or posed true penal consequences. The right embodied in the presumption of innocence in s.11(d) cannot be read to offer individuals a broad protection against any adverse opinions or prejudices drawn against them by individuals or organizations outside the State’s criminal proceedings.

#### *Section 15(1)*

[37] The applicant alleges that the retention and use of the information as it relates to the withdrawn charges constitutes discrimination based on historical criminal proceedings in violation of a person’s right to equal protection and equal benefit of law guaranteed by s.15(1) of the Charter. He asserts that a criminal record has been recognized as an analogous ground of discrimination for the purposes of s.15(1).

[38] The Supreme Court has established framework for analysing an alleged discrimination claim under ss.15(1) of the Charter (*Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497, at para 39). The contextual analysis includes the following inquiries:

- 1) Does the impugned law draw a formal distinction between the claimant and others on the basis of one or more personal characteristics, or fail to take into account the claimant's already disadvantaged position within Canadian society resulting in substantively differential treatment between the claimant and others on the basis of one or more personal characteristics?

- 2) Was the claimant subject to differential treatment on the basis of one or more of the enumerated and analogous grounds? and
- 3) Does the differential treatment discriminate in a substantive sense, bringing into play the purpose of s. 15(1) of the Charter in remedying such ills as prejudice, stereotyping, and historical disadvantage?

[39] The standard from *Law* remains the governing one and it must be reiterated that it is the claimant who must establish, on a civil standard of proof, that the elements noted above are satisfied (*Gosselin v. Quebec (Attorney General)*, [2002] 4 S.C.R. 429, at paras 17-18). The distinction imposed by the challenged law must be shown to be discriminatory in that it harms the claimant's dignity and fails to respect him or her as a "full and equal member of society." It is only after meeting this standard that the burden shifts to the government to justify the distinction under s.1 of the Charter (*Gosselin, supra*, at para 18).

[40] In the instant case, the claimant has asserted that the practice of retaining and using the information about withdrawn charges violates ss.15(1). Mr. Tadros has not challenged a particular law and it is unclear on what basis a ss.15(1) analysis could even proceed. He further relies on *Therrien (Re.)* [2001] 2 S.C.R. 3, for the proposition that a criminal record is an analogous ground of discrimination. However, with respect, Justice Gonthier for the Supreme Court in that instance stated only that he assumed for the purposes of analysis, "without deciding the issue," that a criminal record is an analogous ground of discrimination (*supra*, at para 132). Also, even if having a criminal record had been recognized as an analogous ground, which clearly it has not, it would not necessarily lead to the proposition that a person's non-conviction disposition record would be equivalent. Mr. Tadros does not have a criminal record.

[41] Not only has the claimant failed to meet the requirements established by *Law* on a civil standard of proof, but he has failed to provide even an initial basis for the examination of a claim under ss.15(1). It is thus not possible to continue further in the analysis.

## CONCLUSION

[42] In conclusion, the provisions of the *Charter of Rights and Freedoms* do not apply to Mr. Tadros's situation sufficiently to support his position against the respondent. I further conclude that the claim raised by the applicant against the respondent that collection and retention of this type of information breaches his Charter right to privacy should be dismissed. However, I have concluded that the dissemination of the information about the applicant to the effect that he was charged with eight separate sexual offences against children, but that the charges were withdrawn at the Crown's request, remains without legislative authority and without the authority of the applicant. For these reasons, the application for an order requiring the respondent, The Peel Regional Police Service to expunge from any and all reference check records and/or reports any reference to the eight criminal charges of May 22, 2002, and for a

declaration that the retention of these records constitutes a violation of the applicant's guaranteed Charter rights under sections 7 and 11(d) of the *Constitution Act, 1982* is hereby dismissed. However, I order and direct that The Peel Regional Police Service be prohibited and enjoined from making any reference to the eight withdrawn criminal charges of May 22, 2002, when replying in response to any inquires made to it by any authorized organization or individual about Mr. Tadros.

[43] The applicant should, in my view, be entitled to his costs of this application. In view of the vigorous defences advanced by both respondents, I am of the view that these costs should be the joint responsibility of both respondents. If the parties cannot agree on these costs within 30 days of the release of my reasons, I would be pleased to fix them. Otherwise, I can be so advised by mail.

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Somers J.

**Released:** October 5, 2007

**COURT FILE NO.:** 06-CV-309801PD1

**DATE:** October 5, 2007

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**MAGDY ABDELMALIK TADROS**

**Applicant**

**- and -**

**THE PEEL REGIONAL POLICE SERVICE**

**Respondent**

**- and -**

**ATTORNEY GENERAL OF ONTARIO**

**Intervenor**

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**REASONS FOR JUDGMENT**

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**Somers J.**

Released: October 5, 2007