

Publication Ban Victory for Press

On October 30, 2008 the Supreme Court of Canada dismissed an appeal in *Toronto Police Association v. Canadian Broadcasting Corporation*.^[1] In 2001, an RCMP-led Special Task Force began to investigate allegations made against certain members of the Toronto Police Service (TPS).^[2] The task force obtained a number of search warrants and an authorization to set up a wire tap. The applications for the warrants and authorization contained the names of all of the officers to be investigated. Only one officer was charged as the result of the investigation.

All of the applications had been sealed by the court for a limited amount of time to allow the investigation to proceed. A “sealing order” is a direction from the courts that members of the public, including the media, cannot review those files until a certain date. Various news media applied to have the applications unsealed (made open to the public) on the expiry date. The Toronto Police Association asked that the applications be kept sealed, as there were officers named in the documents who had not faced charges. The news media organizations argued that the investigation was over and that they should be free to examine the documents and report on them. The media argued that their section 2(b) *Charter of Rights and Freedoms* (*Charter*) rights were being breached. Section 2(b) reads:

2. Everyone has the following fundamental freedoms:
 - (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.

In an unreported decision, Justice Ian V.B. Nordheimer of the Superior Court of Justice dated August 20, 2007 ruled in favour of the media. The Police Association appealed. The Ontario Court of Appeal agreed with the trial judge, stating:

In the particular circumstances of this case, the application judge decided the public interest in open justice outweighed the privacy interests of the named officers. He applied the proper test. He also considered whether a publication ban was a reasonable alternative measure that could protect the officers’ privacy interest. He provided detailed reasons for his conclusion that the material should be unsealed and not subject to a publication ban. We are not persuaded that there is any basis for interfering with his decision.^[3]

As a result the press will be free to review the files and report on their contents.

^[1]*Toronto Police Association v. Canadian Broadcasting Corporation*, Supreme

Court of Canada, SCC Case information
webpage. <http://www.scc-csc.gc.ca/information/cms-sgd/dock-regi-eng.asp?32685>.

[2] Supreme Court of Canada, *Judgments To Be Rendered In Leave Applications*,
Ottawa, 2008-10-27, case no. 4.

[3] *The Toronto Police Association v. Canadian Broadcasting Corporation Sun
Media (Toronto) Corporation*, Ontario Court of Appeal, 2008 ONCA 297
(CanLII), [http://www.canlii.org/en/on/onca/doc/2008/2008onca297/2008onca297.ht
ml](http://www.canlii.org/en/on/onca/doc/2008/2008onca297/2008onca297.html).