



Thursday, December 11, 2008 | Today's Toronto Star |

PHOTOS VIDEO COLUMNISTS BLOGS PODCASTS RSS MOBILE NEWSLETTERS ALERTS

thestar.com

 thestar.com Web find a Business
 Advanced Search | Full Text Article Archive

 AUTOS
 CAREERS
 CLASSIFIEDS
 DEATH NOTICES
 REAL ESTATE

HOME NEWS OPINION BUSINESS SPORTS ENTERTAINMENT LIVING TRAVEL WHEELS HEALTHZONE YOURHOME PARENTCENTRAL

Toronto & GTA | Ontario | Canada | World | Ideas | Global Voices | Obituaries | Local Highlights | Science-Tech | Acts of Kindness

Secrecy at issue in Supreme Court case

Right-to-information suit goes back to case of alleged mobster slain in Milton 25 years ago

Dec 11, 2008 04:30 AM

TRACEY TYLER
LEGAL AFFAIRS REPORTER

A battle for a secret OPP report into a botched murder case reaches the Supreme Court of Canada today and the result will determine, perhaps forever, whether Canadians have a constitutional right to government-held information.

The case goes back to the murder of reputed Toronto mobster Domenic Racco, whose body was found 25 years ago yesterday on a Milton railway line.

The two men charged in the slaying, Graham Court and Denis Monaghan, walked free in 1997 after a judge found police and prosecutors engaged in massive abuses, including suppressing almost every piece of evidence helpful to the defence.

The OPP, which conducted its own investigation, later contradicted that finding, issuing a terse news release exonerating the officials. But its 318-page report has remained secret for more than 10 years.

Attempts to get the report under Ontario's freedom of information laws failed.

Now, a saga that began in the gritty world of two alleged hit men has shifted to a crucial constitutional question: How far does freedom of expression go?

Does it simply mean Canadians have a right to speak out? Or does it encompass much more, including giving Canadians the right to obtain information held by governments so they can form opinions on issues of the day?

Ontario's Criminal Lawyers Association, which has spent a decade fighting for the report, argues there's a close connection between access to information and public discussion.

Freedom of expression, as guaranteed by the Charter of Rights and Freedoms, "is not about allowing vocal chords to vibrate and make noise," association lawyer David Stratas and a team of constitutional experts say in their written argument.

"It is about protecting and promoting the free and vibrant circulation of communications that is necessary to sustain and enhance democracy," argues the association, which is supported by the Canadian Newspaper Association (a group that includes the *Star*) and other media groups intervening in the appeal.

Under attack in the case is a provision in Ontario's Freedom of Information and Protection of Privacy Act that allows otherwise confidential documents to be disclosed when there's a compelling public interest.

The provision doesn't apply to law enforcement documents, which prevented the association from getting the report, even though the province's assistant privacy commissioner said he would be hard-pressed to find a document of greater interest to citizens.

The association lost 3-0 in the Divisional Court. But it had a 2-1 victory in the Ontario Court of Appeal last year when Justices Harry LaForme and Jean MacFarland said not allowing the commissioner to consider releasing the documents on public interest grounds offends the Charter's freedom of expression guarantee.

The association said it was the first time a secrecy provision in a North American freedom of information law had been successfully challenged.

Now governments across the country are fighting back, leaning heavily on the dissenting judgment of appeal court Justice Russell Juriansz, who said the Charter's freedom of expression guarantee doesn't oblige governments to disclose information.

Picking up on his dissent, Dan Guttman and Sophie Nunnelley, lawyers for Ontario's attorney general, note that senators and MPs who served on a joint committee on the Constitution in the early 1980s considered and voted against including a right of access to information in the Charter.

Choose text size

> Advertisement <

Introducing a better way to save.

ally

Straightforward.

LEARN MORE ▶

A Product of ResMor Trust Company, MEMBER CDIC

MORE NEWS

Mississauga to buy back 10 per cent of utility

Inspectors to target cosmetic surgery clinics

Ignatieff warns PM: Fix economy, or else

Child-care report card: Canada fails

I'm down and out in grim Britain

Greek court under siege

Politics is a family tradition in America

Obama to governor: Quit

Somali pirates get help from expats in Canada

Panic shopping is in my genes

RECENT SPECIAL SECTIONS

Holidays guide

Digital

Entertainment

2008 Atkinson series

Digital Photo

Western Canada

Desi Life Nov.-Dec.

Guide to Colleges & Universities

[More Specials](#)

But Stratias argues that resorting to what the constitution's framers intended runs counter to "the most basic principles" of Canadian constitutional interpretation – that the Charter is a "living tree" that grows and adapts to realities of modern life.

Politicians rejected other Charter protections that have since been recognized by the courts, including sexual orientation as a ground of discrimination, he said.

Lawyers Paul Schabas and Ryder Gilliland, representing media groups, note that many countries already have constitutional provisions recognizing access to information as a component of freedom of expression, including South Africa, Norway, Bulgaria, Poland and Thailand.

"It is time Canada also recognized access to information as a constitutional right," they said.

