

Disclosure of information

53 (1) A person employed by the assessment corporation, a municipality or a school board is guilty of an offence and on conviction is liable to a fine of not more than \$2,000, or to imprisonment for a term of not more than six months, or to both if,

(a) in the course of the person's duties, he or she acquires or has access to information collected under this Act or to information collected pursuant to an assessment appeal or a proceeding in court involving an assessment matter;

(b) the information is,

(i) proprietary information of a commercial nature prescribed by the Minister relating to an individual property, or

(ii) actual income and expense information on an individual property; and

(c) the person wilfully discloses the information or permits it to be disclosed to any person who is not entitled in the course of their duties to acquire or have access to the information.

Exception

- (2) This section does not prevent disclosure of that information,
- (a) to the assessment corporation or any authorized employee of the corporation; or
 - (b) by any person being examined as a witness in an assessment appeal or in a proceeding in court involving an assessment matter.

Information

(3) Subject to subsection (1), the assessment corporation shall make available to the following entities the information sufficient to meet their planning requirements:

1. Every municipality.
2. Every school board.
3. Every board of a local roads area established under the Local Roads Boards Act.
4. Every local services board established under the Northern Services Boards Act.

Purpose

(4) The information provided under subsection (3) shall not be used by the entities set out in that subsection for any other purpose.

Information for tenants

(4.1) Upon request, a tenant is entitled to receive the information maintained by the assessment corporation in respect of a property, or the portion of a property, leased by the tenant and to receive any other information about the property; the tenant is not entitled to receive the information referred to in subsection (1).

Disclosure

(5) Subject to subsection (1) and to any requirement of the Assessment Review Board concerning the disclosure of evidence, the assessment corporation may disclose any information acquired by it and may do so on such terms as it determines.

Jay Patry Enterprises v MPAC Region 5, [2019] OARBD No 348, CanLii 101169

2465702 Ontario v MPAC Region 2, [2019] OARBD No 347, CanLii 101171

Board Rules

Disclosure

45 All parties must serve a copy, in paper or electronic form, of **all relevant documents in their possession**, control or power to all other parties in the proceeding, **except for** privileged documents, or **documents that cannot be disclosed by law**.

Walmart Canada Corp v MPAC, 2018 Canlii 67789

Section 53 & Disclosure Motions

“An emotional journey through process and procedure”

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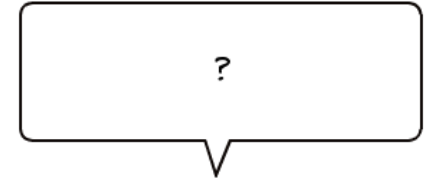
Section 53 Disclosure Motions:

Process and Procedures ?!?



Step 1: Do I need a section 53 Motion?

- What information am I seeking?
- What is MPAC's position?
- Why would the information be confidential?



Step 1: Do I need a section 53 motion?

Yes

- actual income or expense information for a 3rd party property
- proprietary or business information from 3rd party

No

- public information - sales, etc.
- normal disclosure motion - own process

Step 2: Expedited Board Direction Form

- Serve on Third Parties
- Notice Letter
- Copy of MPAC NDA
- Service Information from MPAC + Research
- Serve Pursuant to Board Rules

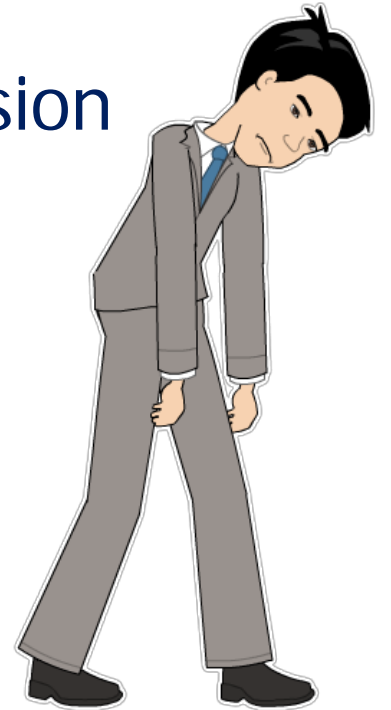


Prior to submitting a request to the Board to schedule a motion for disclosure for documents respecting a Third Person property, the Board requires that the party requesting the disclosure notify the Third Person of the request, by email or in writing. This notice must:

- indicate the specific documents or class of documents being requested;
- include a copy of any confidentiality agreement required by MPAC or other parties, and/or indicate any other terms for disclosure being imposed by MPAC;
- indicate that, within 14 days of the date the notice was sent to the Third Person, the Third Person must provide a written response to the Requesting Party advising whether the Third Person consents to or opposes the disclosure of the requested documents;
- indicate that, if the Third Person fails to respond to the notice, the Third Person will be deemed to have not opposed the request; and
- indicate that any Third Person who opposes the disclosure of the requested documents, may apply to the Assessment Review Board to request status as participant in any disclosure motion scheduled by the Board.

Step 3: Advise ARB of Responses

- Advise ARB, MPAC, Municipality of responses
- Wait for Board to Provide Motion Procedure/Decision
- Formal Order? Probably not
- Provide MPAC with undertakings chart



Documents to Complete

1. Expedited Board Direction Form
2. Notice to 3rd Parties
3. Motion to Request Disclosure
4. Notice of Motion/Argument ??
5. Supporting Affidavit
6. Authorities
7. Affidavit of Service



MPAC's NDA - Confidentiality

- Cannot show disclosed information to client (per MPAC NDA)
- Summary/conclusions only
- LSO obligations – conflict of interest, etc.



Undertakings

5.1-6 A lawyer must strictly and scrupulously fulfill any undertakings given by him or her and honour any trust conditions accepted in the course of litigation.

Undertakings and Trust Conditions

7.2-11 A lawyer shall not give an undertaking that cannot be fulfilled and shall fulfill every undertaking given and honour every trust condition once accepted.

Duty to Avoid Conflicts of Interest

"conflict of interest" means the **existence of a substantial risk that a paralegal's loyalty to or representation of a client would be materially and adversely affected by the paralegal's own interest or the paralegal's duties to another client, a former client or a third person.** The risk must be more than a mere possibility; there must be a genuine, serious risk to the duty of loyalty or to client representation arising from the retainer;

Duty to Avoid Conflicts of Interest

3.4-1 A lawyer shall not act or continue to act for a client where there is a conflict of interest, except as permitted under the rules in this Section.

Consent

3.4-2 A lawyer shall not represent a client in a matter when there is a conflict of interest unless there is consent, which must be fully informed and voluntary after disclosure, from all affected clients and the lawyer reasonably believes that he or she is able to represent each client without having a material adverse effect upon the representation of or loyalty to the other client.

Section 53 Disclosure Motions:

Recent Case Law



Jay Patry Enterprises v MPAC, 2019 CanLii 101169

- Referred to test in *Walmart*: relevance + proportionality
- GRAD/PPR not subject to s 53 Order
- 3rd party objected based on business competition – NDA is fine

2465702 Ontario v MPAC, 2019 CanLII 101171

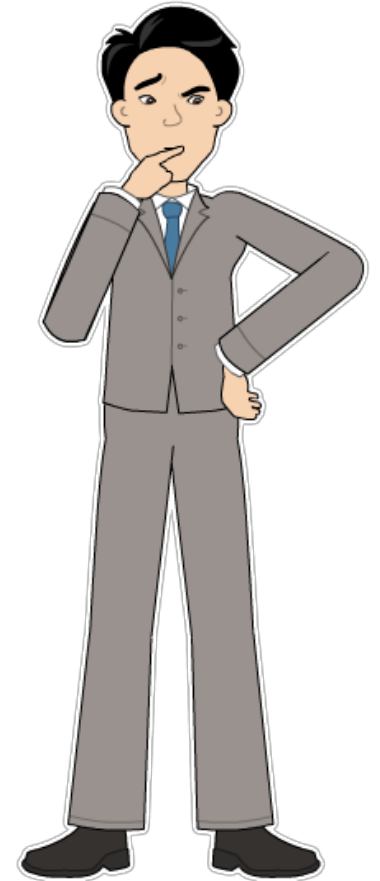
- 3rd Party participated in this motion
- Referred to test in *Walmart*: relevance + proportionality

2465702 Ontario v MPAC, 2019 CanLII 101171

- Relevance:
 - Heavy reliance on Pleadings for issues
 - Heavy reliance on Affidavits for relevance
 - Board did not Order 3rd Party to produce document – not a party
 - Oral vs written hearings

Tips & Things to Think About

- Relief Sought: Extension of SOE (*Walmart*)
- Relevance: Detailed Affidavits, Pleadings,
- Notice Letter: Defuse 3rd party
- Inform client of your confidentiality obligations



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