



F07-11-MS Reluctant Witness Brings Assault Trial to a Halt

The judge and jury had been selected and court dates had been scheduled for an assault trial when Crown counsel discovered that an important prosecution witness had decided not to cooperate. When a special prosecutor concluded that there was little chance of conviction without the testimony of the reluctant witness, the judge ordered a stay of proceedings.

The victim of the alleged assault, dissatisfied with the explanation for the stay of proceedings, sought access to Crown counsel's records on the case. The Criminal Justice Branch granted access to some records and withheld others under sections 14, 15 and 22 of the *Freedom of Information and Protection of Privacy Act*. Under section 15(1)(g), a public body may refuse access to information if disclosure could reasonably be expected to reveal information relating to or used in the exercise of prosecutorial discretion. Schedule 1 of FIPPA defines the "exercise of prosecutorial discretion" to include approving or not approving a prosecution, preparing for a trial, conducting a trial and staying a proceeding. The section 15(1)(g) exception to the general right of access to information is intended to permit candid discussions of the issues without fear that outside scrutiny will interfere with the decision-making process.

We reviewed the withheld records, which documented Crown counsel's approval of the charges, preparation for the trial and decision to stay the trial. The applicant accepted our view that section 15(1)(g) applied to all the withheld records and did not ask us to press forward on the applicability of sections 14 and 22.