



**Information and Privacy
Commissioner/Ontario**
**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER P-1116

Appeal P-9500547

Ministry of Consumer and Commercial Relations



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NATURE OF THE APPEAL:

The Ministry of Consumer and Commercial Relations (the Ministry) received two requests related to bailiffs. The first request was for a copy of the Order-in-Council which gives the Ministry the authority to appoint Ontario limited or incorporated companies as bailiffs. The second request was for a copy of the Order-in-Council which permits the Ministry to enter business premises pursuant to section 13(5) of the Bailiffs Act.

The Ministry advised the requester that responsive records did not exist. The Ministry explained that the authorities referred to in both requests stemmed from the provisions of the Bailiffs Act and not an Order-in-Council. The requester had previously been provided with a copy of the Bailiffs Act.

The requester appealed the decision of the Ministry.

A Notice of Inquiry was sent to the Ministry and the appellant. Representations were received from both parties.

The sole issue for me to determine in this order is the reasonableness of the Ministry's search for responsive records.

DISCUSSION:

The representations of the Ministry include an affidavit from a registration officer with the Ministry's Business Affairs Branch (the registration officer). This individual is specifically assigned to the Bailiffs Act and was responsible for processing the appellant's requests. She has provided an explanation as to why, upon receiving the requests, she immediately knew no records would exist that were responsive to either request. Accordingly, she did not undertake any searches.

I will first address the request for the Order-in-Council giving the Ministry the authority to appoint Ontario limited or incorporated companies as bailiffs.

The registration officer has explained that an Order-in-Council is not necessary to give the Ministry this authority. In the Bailiffs Act, a bailiff is defined as "... a person who acts or assists any person to act on behalf of any person in the repossession or seizure of chattels". Section 3 provides that no person shall act as a bailiff unless appointed as such. Sections 6, 7 and 8 outline the procedure for the appointment of bailiffs.

The appellant's position is that there are no provisions in the Bailiffs Act which authorize the Ministry to appoint Ontario limited or incorporated companies as bailiffs. He points to the references to "person" in the Bailiffs Act as support for this proposition.

However, as the Ministry points out, there is no distinction made in the Bailiffs Act between a corporate person and a human person. Moreover, section 29 of the Interpretation Act defines "person" to include a corporation. When the Bailiffs Act and the Interpretation Act are read together, it becomes apparent that the power to appoint a person as a bailiff under section 3 of

the former includes the power to appoint a corporation. The Ministry summarizes its position on this issue as follows:

As the authority to appoint corporations as bailiffs is contained in the Bailiffs Act, it would be unnecessary to receive such authority pursuant to an Order-in-Council and accordingly there was no need to search the Ministry's records for such an Order-in-Council.

I will now consider the issue of an Order-in-Council which permits the Ministry to enter onto business premises pursuant to section 13(5) of the Bailiffs Act. This section states:

The Registrar may appoint in writing a person to investigate the business of a bailiff as a bailiff and any such person, upon the production of evidence of the appointment under this subsection, may enter between 9 o'clock in the forenoon and 5 o'clock in the afternoon the business premises of the bailiff and examine books, papers, documents and things relating to his or her business as a bailiff.

The Ministry's position is that it does not require an Order-in-Council to give it the authority to enter premises for the purposes of an inspection or investigation under the Bailiffs Act. It submits that section 13(5) is self-explanatory. Thus, the registration officer states that, as no Order-in-Council is necessary for this activity, one would not exist and accordingly it was not necessary to search for one.

In his submissions on this issue, the appellant states:

... Does the Ministry have the authority to enforce section 13 of the Act without just cause and 13.5 of the Act without just cause which violates my privacy.

In my view, these submissions provide no support for the appellant's position that records responsive to this part of the request must exist. Furthermore, any concerns the appellant may have about his privacy rights may be addressed by the Compliance department of this agency.

The Act does not require the Ministry to prove with absolute certainty that the requested record does not exist. In order to properly discharge its obligations under the Act, the Ministry must provide me with sufficient evidence to show that it has made a **reasonable** effort to **identify** and locate records responsive to the request. In my view, in cases where the appellant has not provided sufficient evidence to support the existence of responsive records, and the Ministry provides an explanation given by an employee experienced with such records and/or program as to why such a record **would not** exist, the Ministry has provided sufficient evidence to show that it has made a reasonable effort to **identify** the record. It is not incumbent on the Ministry to undertake a search for such a record.

This is such a case. The Ministry has provided a detailed explanation by the registration officer as to why Orders-in-Council related to the bailiffs' issues do not exist. Moreover, the appellant has not provided any evidence which supports his position that responsive records should exist. Accordingly, this appeal is denied.

ORDER:

I find that the Ministry's decision on the existence of the records was reasonable and this appeal is denied.

Original signed by: _____ February 5, 1996
Anita Fineberg
Inquiry Officer