

ACCESS TO HAZARD RISK ASSESSMENT REPORT DENIED ON BASIS OF FINANCIAL, COMMERCIAL AND SECURITY CONCERNS

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Decision and Implications On October 13, 2016 the Saskatchewan Queen's Bench in *Consumers' Co-operative Refineries Ltd.(CCRL) v. the City of Regina* 2016 SKQB 335 held that information in a major instance hazard assessment report, prepared by Marsh Risk Consulting so that CCRL could obtain approvals from the City and the Ministry of the Environment (MOE) to expand its refinery, should not be publicly disclosed. CCRL had appealed decisions by both the City and the MOE to release redacted versions of the hazard assessment report to a journalist under both the *Local Authority Freedom of Information and Protection of Privacy Act* SS 1990-91, c L-27.1 and the *Freedom of Information and Protection of Privacy Act* SS1990-91 c F-22. These statutes, dealing with the rights and obligations of the City and MOE respectively, mirror access legislation both federally and in other provinces around the country . The ruling has important implications for industries which supply technical information to regulators, particularly nuclear and chemical industries for whom security concerns must always be in the forefront.

The Accepted Facts Crucially, affidavit evidence was introduced on appeal. The hazard assessment report was described as including typical inventory supplies, details of the design and configuration of process equipment and processing methods, operating data associated with the selected process equipment and location details of process equipment. The affidavit stated that knowledge of the inventory, in conjunction with the type of configuration and details of equipment, revealed commercially sensitive information. The CCRL employed a unique configuration of process equipment and processing methods to produce high quality petroleum products. Detailed descriptions of such process equipment and processing methods were of immense economic value to CCRL and their competitors. Six of these competitors operated refineries in Western Canada.

Arguments: Public Interest Override The City argued that despite the mandatory prohibition against disclosure of technical, financial and commercial information supplied in confidence, the statutes gave a discretion to the City and the MOE to provide access to information in a record if disclosure of the information could reasonably be expected to be in the public interest as it relates to public health, public safety or protection of the environment and disclosure on such grounds could reasonably be expected to outweigh the importance of financial loss or gain, prejudice to the competitive position, or interference with contractual or other negotiations. The Court found that the balancing of the continuing need for confidentiality and the public interest in disclosure could best be accomplished through the severance and redaction provision in the statutes. The Court further found that the un-contradicted



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affidavit established a reasonable expectation of harm, damage or detriment to the CCRL and not mere inconvenience and a causal connection between the disclosure and the anticipated harm.

Security Concerns Finally, the CCRL introduced on appeal an affidavit which stated that the hazard report provided a detailed guide to the most vulnerable parts of the refinery where accidents of the severest magnitude could occur. The consultant's affidavit conceded that the modelling and probabilistic analysis was difficult to understand, but had been drafted to include various descriptions and graphics to help explain and reveal the specific parts of the refinery where the worst possible accidents could occur - "by distilling this information into a more digestible form, it is more accessible and may be used as a potential 'playbook' or instructions for any person or group interested in causing the maximum amount of damage to the Regina Refinery (and to adjacent property and persons) in the most efficient manner possible." The affidavit took issue with the City's argument that the information sought to be withheld was available on public internet sites like Google Earth. While Google Earth images were utilized as a graphic aid, they were insufficient to complete the assessment report. "...we required inventory details, details of the specific locations of numerous equipment at the Refinery, the circuitry of the Refinery, the composition of the contents of each vessel among other details that are strictly within the private knowledge of CCRL." The consultant had to apply this proprietary information with its expertise in the use of software and the interpretation of the software results to complete the report. The Court accepted these statements in ruling that the discretionary power to deny access to a record applied when the disclosure could threaten safety or the physical and mental health of an individual. A similar result was obtained in Ontario on December 7, 2011. John Higgins, a senior adjudicator for the Ontario Information and Privacy Commission, upheld a decision by Ontario Power Generation Inc. (OPG) to withhold 'source terms' - estimates of the release of radio-nuclide species from containment into the environment at OPG's nuclear reactor sites due to postulated event sequences ranked according to the probability of occurrence. see *Final Order PO-3019-F, Appeal PA08-96*.