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**X**

Applicant

v.

**ACADÉMIE CENTENNALE (1975) INC.**

Respondent

### **THE APPLICATION FOR REVIEW**

Ms. X. made an application to the Commission d'accès à l'information (Commission) on March 15 2000 to review a decision of Académie centennale (1975) inc. (Centennial Academy) to give her only partial access to her son's file. The school had blocked out nominative information concerning third parties in the file before giving her a copy. Ms. X. wished to have access to the whole file with no information withheld.

The Commission held a hearing in Montreal on April 30, 2001.

### **THE HEARING**

At the hearing, the parties expressed the following positions.

Ms X wished to obtain what she qualified as a complete, uncensored version of her son's school file in order to assert her authority as a parent and her rights as a mother to her minor child. In her letter of February 21, 2000 to the Academy she requested :

« [...] a copy of the total contents of my son's [...] files. This includes copies of all correspondence written by [the father] and others, including a copy of the note with a request to restrict access to [her son] while he is in school ».

At the hearing she affirmed that it was in the best interests of the child if all information be made available and that she know the names of those persons which the father wished to have contacted by the school in certain circumstances. In her opinion, neither parent should be kept ignorant of information regarding her or his child. She stated that under the Civil Code of Quebec articles 598, 599 and 600, she has the full rights of a parent.

S. 598 A child remains subject to the authority of his father and mother until his majority or emancipation.

S. 599 The father and mother have the rights and duties of custody, supervision and education of their children. They shall maintain their children.

S. 600 The father and mother exercise parental authority together. If either parent dies, is deprived of parental authority or is unable to express his or her will, parental authority is exercised by the other parent.

She submitted the Superior Court decision of Judge Israel S. Mass dated September 24, 1997 which finalized the divorce and awarded joint custody of the children to the husband and wife. At the time of her request for access to her child's file, he was living with his father.

The school, Centennial Academy, did not wish to become involved in a dispute between the parents and considered its obligation to be that of interpreting the relevant law, the *Act respecting Access to documents held by public bodies and the Protection of personal information* (the « Act ») as it applies to the child's file.

In applying s. 88 of the Act, the Academy submitted that it had already given access to the note in question, but with the names blocked out. The respondent Academy considered that it has an obligation to conceal the identities of the third parties who may be mentioned. In support of this position the respondent refers to the decision of *X...c. Commission Scolaire de Ste-Thérèse*<sup>1</sup>.

### **THE RELEVANT FACTS AND LAW**

The concept of the best interests of the child which is used in family law is not helpful, perhaps unfortunately, in interpreting the relevant provisions of the Act respecting Access. While Ms. X. has full parental authority in regards to her minor child, the Superior Court has also recognized the parental rights of the father. The respondent Academy must take this into account. When the father, with whom the child is living while attending school, writes to the Academy concerning his child and mentioning in his note third parties, the Academy must apply the relevant law which has the effect of treating the mother on the same footing as any other person as far as concerns nominative information on third parties is concerned. The Act respecting Access does not speak directly to the situation of parents who do not co-habit together with the child and who may not be in agreement on his or her upbringing.

The Academy correctly applied the only section of the Act which has any relevance to this situation and that is section 88 :

S. 88 Except in the case provided for in paragraph 4 of section 59, a public body must refuse to release nominative information to the person concerned if its release would likely disclose nominative information concerning another natural person or the existence of such information, unless the latter person gives written consent.

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<sup>1</sup> [1995] C.A.I. 40 à 42.

In the absence of clear indication in the Act or the Civil Code, I can find nothing which allows the protection extended to third parties to be waived in the case of joint custody of a minor child.

Moreover, the limits of the rights of access of parents has been explored in the decision of *X. c. Commission scolaire de Sainte-Thérèse* where the Commission decided that the applicant parent, who did not have custody or even access to his children, nonetheless had a right to information concerning their progress and attendance at school. However, he did not have a right to the nominative information on file concerning them, their mother or teachers. The case of *Carrier c. la Commission des Écoles Catholiques de Montréal*<sup>2</sup> also affirmed the principle that educational institutions cannot divulge nominative information on third parties which is in the child's file, even to parents.

In applying this case law, while taking note of the situation regarding custody in the present case, I find the applicant X. has a right of access to documents concerning her son's progress and attendance at school. However, this right must not impinge on the right of third parties to have kept confidential nominative information which concerns them.

Profound disagreements between parents on the education of minor children can be dealt with in other judicial and non-judicial settings.

## **DECISION**

Accordingly, I find that the respondent Centennial Academy has acted appropriately in giving Ms. X. a copy of the note which she requested but with the nominative information concerning third parties blocked out.

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<sup>2</sup> [1987] C.A.I. 212 à 214.

The Commission therefore rejects the application for review.

Montreal, May 29, 2001

**JENNIFER STODDART**  
Commissioner

M<sup>e</sup> François Charette  
Attorney of Respondent