

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

JENNINGS, FERRIER and PERKINS JJ.

B E T W E E N:)
)
GERANIUM CORPORATION) *Jeff G. Cowan*, for the Applicant
)
Applicant)
)
- and -)
)
)
) *David Goodis*, for the Information and
INFORMATION AND PRIVACY) Privacy Commissioner/Ontario
COMMISSIONER/ONTARIO, THE)
CORPORATION OF THE TOWN OF) *B. Leanne Rapley*, for Kelly Clarke
INNISFIL, and KELLY CLARKE)
)
Respondents)
)
) **HEARD at Toronto:** January 29, 2007

BY THE COURT:

[1] Geranium applies for judicial review of the decision of the Commissioner that Ms. Clarke's letter to the Town following her submission at a public hearing was exempted from disclosure to Geranium by s. 14(1) of the *MFIPPA*. The parties agree that the standard of review with respect to the Commissioner's interpretation of the *MFIPPA* is reasonableness. We find that in interpreting the *Planning Act* the Commissioner was required to be correct. See *Ryan v. Law Society of New Brunswick*, (2003), 223 D.L.R. (4th) 577 (S.C.C.).

[2] Geranium submits that the effect of the Commissioner's decision is to deprive it of the right to see the contents of a letter that was before the Town prior to council's decision made following the public hearing. Notwithstanding that council's decision was to approve of Geranium's proposal, counsel submits that principles of fundamental fairness arise because it did not know the allegations made against it.

[3] Responding counsel concedes that the Commissioner had no jurisdiction to direct that the letter not form part of the record, which the Town was required to forward to the OMB, although we are told that the Town has so interpreted the decision under review.

[4] We agree that counsel's concession was properly made. However, counsel further submits that there is no conflict between the *Planning Act* and the *MFIPPA*. The two statutes can co-exist; in that a result obtained under one statute may not be the result obtained under the other.

[5] Counsel further relies upon s. 51 of the *MFIPPA*, which provides:

51(1) This Act does not impose any limitation on the information otherwise available by law to a party to litigation.

(2) This Act does not affect the power of a court or a tribunal to compel a witness to testify or compel the production of a document.

[6] We agree with that submission, and would further note that in our opinion, there is nothing in the decision under review to prevent the OMB from requiring the full record, including the letter in question, to be placed before it. We further note that s. 38 of the *Ontario Municipal Board Act* permits the Board to order production and inspection of documents to the same extent as may the Superior Court.

[7] In all other respects, we find the analysis and interpretation by the Commissioner of the *MFIPPA* to have been reasonable. In effect, the Commissioner has determined that Geranium may not have access to the letter because production offends the provisions of the *MFIPPA*. That decision can co-exist with any order the OMB may make for production, or any order another court may make regarding compliance with the *Planning Act*.

[8] The application is therefore dismissed.

[9] Pursuant to an agreement amongst counsel, there will be no order for costs to the Commissioner. An order will go in favour of Ms. Clarke awarding her costs against Geranium fixed under the circumstances pertaining to the hearing at \$2,500.

JENNINGS J.
FERRIER J.
PERKINS J.

Date of Reasons for Judgment: January 29, 2007
Date of Release: February 1, 2007

COURT FILE NO.: 282/05

DATE: 20070129

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

JENNINGS, FERRIER and PERKINS JJ.

B E T W E E N:

GERANIUM CORPORATION

Applicant

- and -

INFORMATION AND PRIVACY
COMMISSIONER/ONTARIO, THE
CORPORATION OF THE TOWN OF INNISFIL,
and KELLY CLARKE

Respondents

REASONS FOR JUDGMENT

BY THE COURT

Date of Reasons for Judgment: January 29, 2007

Date of Release: February 1, 2007