

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

MacFARLAND, McCOMBS and WILSON JJ.

B E T W E E N:)	
)	
MINISTRY OF CORRECTIONAL SERVICES)	<i>Sara Blake</i> , for the applicant
)	
)	Applicant) <i>John Swaigen</i> for the respondent David
)	Goodis, Senior Adjudicator
- and -)	
)	<i>Christine Lonsdale</i> for the respondent Jane
DAVID GOODIS, Senior Adjudicator, and)	Doe, Requester
JANE DOE, Requester)	
)	
)	Respondents)
)	
)	HEARD: January 26, 2004

ENDORSEMENT

[1] The applicant submits that since the issue of disclosure (with a confidentiality undertaking) was considered in the context of an application under the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.F.31 (*FIPPA*), rather than a civil action, therefore the jurisdiction of the motions judge to order production was limited to the powers vested in the Commissioner by *FIPPA*.

[2] We do not accept that position. We are all of the view that a judge of this court has jurisdiction to control its own process and to ensure procedural fairness to all parties. See *N.E.I. Canada Ltd. v. Information and Privacy Commissioner of Ontario*, [1990] O.J. No. 701 (Ont. S.C.), and see also *Attorney General for Ontario v. Hale*, unreported decision of O'Leary J. (October 26, 1994) (Div. Ct.).

[3] We are not persuaded that there was any error on the part of the motions judge in ordering disclosure of the entire Private Record. The Ministry takes the position that *FIPPA* does not apply to these records. In our view, the position taken by the Ministry therefore puts the entire record into issue.

[4] As Mr. Swaigen pointed out, it may be of assistance, both to counsel and the court, to see the documents ordered produced as well as those that were not, to make what he or she can of any distinctions, and to provide context.

[5] Clearly, the motions judge was concerned that fairness to the requester required that her counsel have access to the Private Record, subject to a confidentiality agreement, when all other counsel had reviewed the documents in issue.

[6] We note that the motions judge was not specifically requested to review the records in question before deciding the issue of production. Although it may have been preferable had the motions judge reviewed the material, his order was a discretionary one that was within his jurisdiction. As such, the order is entitled to deference, absent a palpable and overriding error. No such error has been identified. Moreover, the terms of the confidentiality undertaking are so broad that there is no risk of disclosure pending the return of the judicial review application.

[7] The motion is dismissed.

MacFARLAND J.

McCOMBS J.

WILSON J.

Released: January 26, 2004