

**ONTARIO COURT (GENERAL DIVISION)
DIVISIONAL COURT**

White J.

TORONTO BOARD OF EDUCATION

- and -

DAVID BURK et al.

E N D O R S E M E N T

This is a motion by Shibley Righton solicitors under Rule 13.01(1)(b) to be added to the application of the Board for judicial review of the order of the Inquiry Officer under the MFIPPA. The order in question requires the Board to disclose which of certain documents were in its solicitor's possession. The order prima facie intrudes on solicitor and client privilege. The thrust of the application for judicial review is that solicitor client privilege will be breached by compliance with the Board's order. Of course any such privilege is that of the client and the Board can be expected through its present solicitor Hicks Morley to vigorously argue for the retention of privilege.

What interest does Shibley Righton personally have in the application for judicial review? In a letter to the Board from Mr. Burk dated November 2, 1994 the following paragraph appears "Mr. Bell's action in dealing with various requests under the "Act" as well as certain advice he gave in 1990 are under serious considerations for action outside the FIPPA." Mr. Bell is a senior partner of Shibley Righton. I regard the above quoted paragraph to contain a threat that Mr. Burk will take legal action against Shibley Righton for conduct having to do with legal advice given by Shibley Righton to the Board concerning Mr. Burk.

Rule 13.01(1)(b) permits the court to add a party as intervenor to a proceeding if "that person may be adversely affected by a judgment in the proceeding."

Having regard to the threat above noted it is my opinion that Shibley Righton may be adversely affected by the courts' judgment in the application for judicial review and that they should be granted intervenor status.

An order will go granting Shibley Righton intervenor status who shall file their factum within three weeks.

This is not a matter for costs.

Dated: May 9, 1995

“J.G.M. White J.”