

ONTARIO  
SUPERIOR COURT OF JUSTICE  
DIVISIONAL COURT

MACFARLAND, FORESTELL AND WILSON JJ.

**B E T W E E N:** )  
)  
CITY OF TORONTO ) *Leslie Mendelson and Jane Speakman, for*  
) the Applicant  
Applicant )  
)  
- and - )  
)  
) *William S. Challis and John Swaigen, for the*  
) Respondent, Ontario Information and  
HUMANE SOCIETY OF CANADA and ) Privacy Commissioner, Tom Mitchinson,  
ONTARIO INFORMATION AND ) Assistant Commissioner  
PRIVACY COMMISSIONER, TOM )  
MITCHINSON, ASSISTANT ) *Michael O'Sullivan, for the Humane Society*  
COMMISSIONER ) of Canada.  
)  
Respondents )  
) **HEARD:** February 18, 2004

**MACFARLAND J.:** (Orally)

[1] We are all of the view that the subject decision of the Assistant Commissioner is one that lies squarely within his jurisdiction and expertise. The Commissioner has experience in assessing claims of institutions about the difficulty and costs involved in searching records including the nature of the evidence necessary to show that a fee estimate or time extension is reasonable.

[2] There is no issue at this stage whether the document should be produced, only when and on what terms. The issues before this Court relate to the appropriateness only of the fees sought and the timing of the production. The subject order is in essence procedural in nature.

[3] In the circumstances, the standard of review clearly is that of reasonableness. See *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information & Privacy Commissioner)* (1998), 164 D.L.R. (4th) 129 at 138.

[4] This standard is a relatively high one. An unreasonable decision is one that is "irrational", "not in accordance with reason" or "in the main not supported by any reasons that can stand up to

a somewhat probing examination". It is not for this Court to intervene unless the decision can be said to be irrational.

[5] We are all of the view that this decision of the Assistant Commissioner is not. The application is dismissed.

[6] The application record will read as follows: "For reasons given, the application is dismissed. No costs."

MacFARLAND J.  
FORESTELL J.  
WILSON J.

**Date of Reasons for Judgment: February 18, 2004**

**Date of Release: February 20, 2004**

**COURT FILE NO.:** 260/03

**DATE:** February 18, 2004

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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**MACFARLAND, FORESTELL AND  
WILSON JJ.**

**B E T W E E N:**

CITY OF TORONTO

Applicant

- and -

HUMANE SOCIETY OF CANADA and  
ONTARIO INFORMATION AND PRIVACY  
COMMISSIONER, TOM MITCHINSON,  
ASSISTANT COMMISSIONER

Respondents

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**ORAL REASONS FOR JUDGMENT**

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**MACFARLAND J.**

**Date of Reasons for Judgment: February 18, 2004**

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