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COURT OF APPEAL FOR ONTARIO

RE:	MINISTRY OF FINANCE (Applicant/Responding Party) v. JOHN HIGGINS, INQUIRY OFFICER (Respondent/Appellant) and JOHN DOE, REQUESTER (Respondent/Responding Party)
AND RE:	MINISTRY OF FINANCE (Applicant/Responding Party) v. JOHN HIGGINS, INQUIRY OFFICER (Respondent/Responding Party) and JOHN DOE, REQUESTER (Respondent/Appellant)
BEFORE:	AUSTIN, FELDMAN JJ.A. and SHARPE J. *ad hoc*
COUNSEL:	William S. Challis for the appellant, John Higgins Peter M. Jacobsen, for the appellant, John Doe Sara Blake and Priscilla Platt for the respondent, Ministry of Finance
HEARD:	January 27, 1999

E N D O R S E M E N T

[1] This is an appeal from the judgment of the Divisional Court of February 6, 1998 wherein that court quashed the order of the inquiry officer of May 27, 1997. In their reasons for judgment, the majority held that the standard of review of a decision of the inquiry officer under s. 23 of the *Freedom of Information and Protection of Privacy Act* R.S.O. 1990 c. F.31 is correctness. We disagree. We are in substantial agreement with the reasons set out in the dissenting judgment of MacDougall J., in particular on the issue of the standard of review.

[2] The legislature has entrusted the application of s. 23 to the issue of disclosure of any particular record first to the head, and then to the inquiry officer. Both the application of the section and therefore its interpretation are within the expertise of the inquiry officer under the Act whose

decision must be accorded deference by the courts. The standard of review is therefore reasonableness.

[3] In our view both the interpretation of the section and its application in this case by the inquiry officer to the documents sought by the requester were reasonable and therefore his decision ought not to be set aside. Contrary to the submission of the respondent, in our view the reasons of the inquiry officer make clear that in adopting a dictionary definition for the term "compelling" in the phrase "compelling public interest", the inquiry officer was not seeking to minimise the seriousness or strength of that standard in the context of the section. In fact he noted that the issue of the Quebec referendum and the potential impacts of a "yes" vote were of "virtually unprecedented importance" and went on to describe the public interest in the disclosure of the documents in question to therefore be "very compelling". Furthermore, as found by MacDougall J., the inquiry officer turned his mind to the second issue of whether that interest "clearly outweighed" the prejudice and injury which forms the basis for the original exemption of the documents from disclosure. His conclusion on this issue was reasonable.

[4] The appeal is therefore allowed, the order of the Divisional Court is set aside and the order of the inquiry officer of May 27, 1997 is reinstated. Costs of the appeal to the requester fixed at $4000.

AUSTIN J.A.
FELDMAN J.A.
SHARPE J. (*ad hoc*)