Court File No.: **Div. Ct. 383/98**

ONTARIO COURT (GENERAL DIVISION)
DIVISIONAL COURT

B E T W E E N:	)	
	)	
THE ATTORNEY GENERAL FOR ONTARIO	)	*Sara Blake*,
	)	for the Applicant
Applicant	)	
- and -	)	
	)	
TOM MITCHINSON, Assistant Information and	)	*David Goodis*
Privacy Commissioner of Ontario and JANE DOE,	)	for the Respondent
Requester	)	
	)	*Joanne E. Mulcahy*
Respondents	)	for Jane Doe, Requester
	)	
	)	**Heard at Toronto:**
	)	**Friday November 20, 1998**

Court File No.: **Div. Ct. 681/98**

ONTARIO COURT (GENERAL DIVISION)
DIVISIONAL COURT

IN THE MATTER OF the Freedom of Information and
Protection of Privacy Act, R.S.O. 1990, c. F.31

B E T W E E N:	)	
	)	
THE SOLICITOR GENERAL AND MINISTER	)	*Sara Blake*,
OF CORRECTIONAL SERVICES	)	for the Applicant
	)	
Applicant	)	
- and -	)	
	)	
TOM MITCHINSON, Assistant Commissioner,	)	*David Goodis*
and JANE DOE, Requester	)	for the Respondent
	)	
Respondents	)	**Heard at Toronto:**
	)	**Friday November 20, 1998**

Court File No.: **Div. Ct. 698/98**

ONTARIO COURT (GENERAL DIVISION)
DIVISIONAL COURT

B E T W E E N:	)	
THE ATTORNEY GENERAL OF ONTARIO	)	*Sara Blake*, for the Applicant
Applicants	)	
- and -	)	
TOM MITCHINSON, Assistant Information and Privacy Commissioner of Ontario, and JOHN DOE, Requester	)	*David Goodis* for the Respondent
	)	*"John Doe" Requester* appearing in person
Respondents	)	
	)	**Heard at Toronto: Friday November 20, 1998**

GRAVELY J. (orally)

COPY OF ENDORSEMENT ON MOTION

[1] This motion for a stay is heard together with similar motions in 681/98 and 698/98.

[2] It is common ground that the test for granting a stay is the three-part interlocutory injunction test:

1. Serious issue to be tried;
2. Irreparable harm to appellant;
3. Balance of convenience.

[3] I am satisfied that the application of section 65(6), 1 and 3, common to all three motions raises serious issues.

[4] In contention in all three motions is the question of whether the applicant will suffer irreparable harm if a stay is not granted.

[5] It is argued on behalf of the applicant that being compelled to respond to the Commissioner's Notice of Inquiry and present its representations at the enquiry according to the Notice may render the Application negatory and would lead to impingement of numbers of rights given by the Legislation.

[6] I am not satisfied there is a serious risk of that occurring. The oral inquiry is designed to find out what happened to the documents, not to have them disclosed. The presence of Tom Schneider and Joanne Dunlop is suggestive only. They were not subpoenaed. I assume the enquiry will be conducted with due regard to the requirements of s. 52. I agree with the interpretation given to section 52(13) by Commissioner Linden, in Reference: Order 164, Human Rights Commission. Applied here, the relevant parties have no right to be present during representations of others but the Commissioner may choose to permit them to be or direct them to be present.

[7] In all three cases if the existence of documents is determined, disclosure does not necessarily follow. If the Applicant refuses to disclose, that issue may eventually be determined by the Commissioner and at that point the Applicant may choose to apply again to the Divisional Court.

[8] I am not persuaded that in any of these three cases irreparable harm is likely and these motions are dismissed.

[9] Costs may be dealt with by letter argument.

GRAVELY J.

RELEASED: November 30, 1998