

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

Goodearle J.

JOHN DOE

and

**TOM A. WRIGHT, Assistant Commissioner under the
FREEDOM OF INFORMATION AND PROTECTION
OF PRIVACY ACT, 1987 et al.**

ENDORSEMENT

Order to go as asked in paragraphs 1-7 inclusive of the notice of motion herein.

As to the motion by the applicant John Doe for an order to allow filing of the additional affidavits of J. Robert MacKinnon and John Doe, both sworn the 16th of January, 1992, to be included in the material in the application to be argued in September of 1992, I am not persuaded that they should be included in the material. They were not before the Assistant Commissioner during argument preceding his decision and would therefore form no part of the reasons he gave in reaching his decision. Each of these affidavits if admitted would have the effect of introducing new facts in aid of the applicant's attempt to deflect the Commissioner's finding of facts.

As well, neither of these affidavits contain any real substance relevant to the single aim of the applicant in these proceedings, that is to remain anonymous.

Finally, neither affidavit could be used to show jurisdictional error on the part of the proceeding before the Assistant Commissioner. As noted by Morden J.A. in *Keeprite Workers' Independent Union v. Keeprite Products Ltd.* (1980), 29 OR. (2d) 513 at 521 (C.A.), "I would think that the

occasions for the legitimate use of affidavit evidence to demonstrate the exacting jurisdictional test of a complete absence of evidence on an essential point would, indeed, be rare.”

These affidavits will be excluded from the material filed and as a somewhat novel point has been argued and there was very substantial agreement on other collateral issues there will be no costs to any party in attendance.

Dated: May 6, 1992

“J. A. Goodearle J.”