

ONTARIO COURT OF JUSTICE
(GENERAL DIVISION)
DIVISIONAL COURT

McMurtry C.J.O.C., Steele and MacFarland JJ.

B E T W E E N:)	
)	
THE ATTORNEY GENERAL OF ONTARIO)	<u>R. Ratcliffe</u>
)	for the applicant
Applicant)	
- and -)	
)	
)	
ANITA FINEBERG, JOHN DOE AND)	<u>W. Challis and D. Goodis</u>
PETER DOE)	for the respondent Anita Fineberg
)	
Respondents)	<u>R.P. Armstrong, Q.C.</u>
)	for the respondent Peter Doe
)	
)	
)	<u>HEARD:</u> January 8, 1996

McMurtry C.J.O.C. (orally):

[1] This is a judicial review application seeking to quash part of Order 676 of Anita Fineberg an Inquiry Officer made under the Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31. The issue involves a solicitor’s account for legal services provided to the respondent Peter Doe who was the prosecuting attorney at all material times engaged in a private lawsuit for defamation in relation to his performance as a law officer of the Crown.

[2] The request for access to documents related to the solicitor’s account was denied in part by the Ministry of the Attorney General. An appeal was made to the Commission and the Inquiry Officer ordered the release of some of the records. Section 50(3) of the legislation requires that:

Upon receiving a Notice of Appeal the Commissioner shall inform the head of the institution concerned and any other affected person of the Notice of Appeal.

[3] The respondent Peter Doe was not informed of the Notice of Appeal and was not given an opportunity to make representations.

[4] Counsel on behalf of the Commissioner argues that Peter Doe was not an “affected person” within section 50(3) as the information sought did not qualify as personal information. In other words, the respondent Peter Doe would not be entitled to the Notice of Appeal if the Commissioner determined as a threshold issue that access to personal information was not being sought.

[5] We are of the opinion that the respondent Peter Doe is clearly an “affected person” within section 50(3). While this is a unique situation to quote the words of the Hearing Officer, it would be unreasonable in our view not to so hold. This is not a case where the respondent Peter Doe is simply someone whose name is connected with the document, but he is, in fact, the individual for whom the services were being performed which are the subject of all the documentation to which access is sought.

[6] In our view, the Commissioner has a duty of fairness to someone in the position of Peter Doe and that is the intent of the Notice provision of section 50. While who may be reasonably considered to be an affected person may well vary in the individual circumstances of each case, it would be unreasonable to hold that Peter Doe was not an affected person in the circumstances of this matter.

[7] The Order is therefore quashed and the matter is remitted to the Commission for a reconsideration by a new Hearing Officer upon proper notice.

[8] Costs of the respondent Peter Doe in the amount of \$1,500.

McMURTRY C.J.O.C.
STEELE J.
MacFARLAND J.

RELEASED: January 12, 1996