

ONTARIO COURT OF JUSTICE
(GENERAL DIVISION)
DIVISIONAL COURT

WHITE, MCRAE AND MACFARLAND JJ.

B E T W E E N:)
)
THE ATTORNEY GENERAL OF ONTARIO) L. Price
) for the Applicant
Applicant)
)
- and -)
)
)
) W. Challis and M. O'Donoghue
IRWIN GLASBERG, ASSISTANT) for the Respondent Irwin Glasberg
INFORMATION AND PRIVACY) D. W. Stratas and P. S. Bonner
COMMISSIONER; JANE DOE; AND THE) for the Respondent The Honourable
HONOURABLE ASSOCIATE CHIEF JUDGE) Robert Walmsley
ROBERT WALMSLEY)
)
Respondents) HEARD: March 25, 1996

WHITE J. (orally):

This is an application by the Ministry of the Attorney General of Ontario (the "Ministry"), for judicial review of Order P-704 made by the respondent Irwin Glasberg, Assistant Commissioner, Office of the Information and Privacy Commissioner Ontario. In Order P-704 made under the Freedom of Information and Privacy Act, the Assistant Commissioner held that the Ministry of the Attorney General had control over the records of the Judicial Appointments Advisory Committee (the "Committee") and ordered the Ministry to obtain copies of all documents relating to the selection of an individual to the position of judge of the Ontario Court (Provincial Division) from the Committee.

The Assistant Commissioner also ordered the Ministry to provide the requester of information with a new decision letter regarding access to the letters over which the Ministry

obtained custody. The Ministry seeks to have this court set aside the Assistant Commissioner's order on this application for judicial review.

The pertinent sections of the Freedom of Information and Protection of Privacy Act, R.S.O. 1990 c. F.31 are ss. 2 and 10. Section 2 in its relevant part states:

2(1) In this Act

“head”, in respect of an institution means

(a) in the case of a Ministry, the Minister of the Crown presides over the Ministry.

...

“institution” means

(a) a ministry of the Government of Ontario.

Section 10 in its relevant part states:

10(1) Every person has a right of access to a record or part of a record in the custody or under the control of an institution unless the record or the part of the record falls within one of the exceptions under sections 12-22.

For the purpose of this application for judicial review, the court is prepared to concede that s. 10 is a jurisdiction limiting section and that a decision of the Assistant Commissioner in construing that section and in applying it to the facts of a given case must be correct as a matter of law.

These facts are undisputed: (1) the Committee was an ad hoc committee appointed by the then Attorney General; (2) its essential purposes were to screen candidates for the judiciary and make recommendations to the Attorney General of those suitable for judicial appointment, in the way of a list of names.

The work of the Committee thus facilitated the execution of the statutory duty imposed on the Attorney General under s. 42 of the Courts of Justice Act, R.S.O. 1990. Section 42 of the Courts of Justice Act in its relevant part provides:

42(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint such provincial judges as are considered necessary.

In the course of their ad hoc duties, individual members of the Committee acquired possession of certain documents. Such documents were obtained by them to enable individual members to join with their fellow Committee members in making recommendations to the Attorney General. Such documents would not have been in the possession of the individual Committee members but for their status as Committee members. The members did not acquire possession of the documents in a personal capacity; they acquired possession of them in a representative capacity. That capacity was as advisors to the Attorney General in carrying out her statutory duty under s. 42(1) of the Courts of Justice Act.

The property in the documents was never vested in the individual members of the Committee. It was vested in the Attorney General. While independent of the Attorney General in its administration, such as receiving applications for judicial appointment, interviewing candidates, deliberating on the merits of respective candidates and recommending a list of suitable judicial candidates to the Attorney General, in essence, the Committee was an agency of the Attorney General. It was doing the work that the Attorney General would otherwise have had to do herself or through other agents so as to enable her to completely perform her statutory duty under s. 42(1) of the Courts of Justice Act. Thus, the documents acquired by the individual members of the Committee in their official capacity were acquired by them as agents of the Attorney General.

Complete impartiality in the functioning of the Committee in the sense of its fact finding and recommendations being completely at arms length from the Attorney General, i.e. being immune from political or other interference in its work from the Attorney General is not incompatible with the Committee being, in essence, an ad hoc agency of the Attorney General.

Thus the documents being under the control of agents of the Attorney General, such documents in law are under the control of the Attorney General. We accept the findings of the Assistant Commissioner (1) that the Committee was part of the Ministry of the Attorney General and

(2) the documents in the custody and control of the Committee were within the custody and control of the Ministry of the Attorney General.

For those reasons, the application for judicial review is refused. No costs.

WHITE J.
McRAE J.
MacFARLAND J.

RELEASED: March 27, 1996

COURT FILE NO.: 414/94

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Applicant

- and -

IRWIN GLASBERG, ASSISTANT
INFORMATION AND PRIVACY
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JUDGE ROBERT WALMSLEY

Respondents

ORAL JUDGMENT

WHITE J.

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