

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

O'Leary J.

ATTORNEY GENERAL FOR ONTARIO

- and -

DONALD HALE et al.

E N D O R S E M E N T

The application is allowed, with one exception. No order as to costs.

I am not convinced that Mr. Jacobsen cannot adequately advise his client without the in house solicitor and his advising company officer also seeing the record to be sealed.

It may well be that the practice of this sophisticated client is to decide for itself, after examining all information whether to go along with the advice of counsel. That does not mean the client cannot be properly advised without its having the information.

The extent to which a breach of solicitor client privilege is to be allowed by the Court cannot depend on the practice of a particular client that seeks to see the privileged information.

It cannot be that one person can be allowed to see the information because he is cautious about accepting the advice of counsel, while another client in another case will be barred from the information because he customarily relies on the advice of counsel.

The issue is - to what extent is it necessary to breach solicitor client privilege and permit others to see the record. I conclude that it is not necessary for justice to be done, for the judicial

review application to be fairly argued, that in house counsel and his advising officer also see the record.

Mr. Jacobsen submitted that it was necessary that these others see the record so they could decide whether there was anything in that record to make it worth the client's while to proceed with the judicial review. In my view it would be improper to allow them to see the record for that reason. That would accomplish at least part of the purpose that lead ultimately to the judicial review application. The issue is not whether there is purpose in pursuing the judicial review but the extent to which solicitor client privilege must be breached to permit justice to be done.

Only Mr. Jacobsen and necessary legal and administrative staff will be allowed to see the record.

The sealing order is made as requested subject to that exception.

No order as to costs.

Dated: October 26, 1994

"O'Leary J."