

ONTARIO COURT OF JUSTICE
(GENERAL DIVISION)
DIVISIONAL COURT

CARRUTHERS, ROSENBERG, ADAMS JJ.

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

AND IN THE MATTER OF the Young Offenders Act, R.S.C. 1985, c. Y-1, as amended

AND IN THE MATTER OF the Judicial Review Procedure Act, R.S.O. 1990, c. J.1

AND IN THE MATTER OF Order P-804 of John Higgins, Inquiry Officer, dated November 29, 1994

B E T W E E N:

THE SOLICITOR GENERAL AND MINISTER
OF CORRECTIONAL SERVICES

Applicant

- and -

JOHN HIGGINS, Inquiry Officer and JOHN DOE

Respondents

)
)
) Leah Price and Peter Landmann
) for the Applicant
)
)
) William Challis and David Goodis
) for John Higgins, Inquiry Officer
) Information and Privacy
) Commissioner/Ontario.
)
)
) **HEARD: June 4, 1996**

ROSENBERG J. (orally)

The majority of the records in question are documents covered by the Young Offenders Act. It is accordingly an offence to publish them by section 38.1 of the Young Offenders Act. The Act provides for a number of exemptions allowing publication in some limited respects. Neither the Young Offenders Act or the Lieutenant Governor in Council have exempted the Privacy Commissioner. The Lieutenant Governor in Council can exempt the Privacy Commissioner under

section 44.1(h) but has not done so. Since the legislature has not chosen to exempt the Privacy Commissioner it would be, in my view, inappropriate for the court to so exempt the Privacy Commissioner and accordingly the application is allowed.

CARRUTHERS J.
ROSENBERG J.
ADAMS J. – I dissent.

RELEASED: June 19, 1996

ADAMS J. (orally)

I dissent. In my view, providing the records in question to the Privacy Commissioner at his or her direction would not contravene the federal legislation. The purpose of the Young Offenders Act is to protect the privacy of youthful offenders. The Privacy Commissioner is dedicated to that same objective and in exercising his jurisdiction reasonably requires to inspect the document to ensure it is what the responding party claims it to be. I don't understand the provisions of YOA to be sufficiently expressed to preclude that procedural usage of the document. Furthermore, I do not read the provision of section 44.1(1)(h) to be a provision designed to authorize this kind of access to the record. The Commissioner is not seeking, in my view, to use the record as intended by a person designated pursuant to the subparagraph (h). For all of these reasons, I would have directed that the records in question be provided to the Commissioner pursuant to his direction.

ADAMS J.

RELEASED: June 19, 1996

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ORAL JUDGMENT

ROSENBERG J.

RELEASED: June 19, 1996