

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

THEN, J. MACDONALD AND C. CAMPBELL JJ.

B E T W E E N:)
)
CHILDREN'S LAWYER FOR ONTARIO) *Elaine Atkinson*, for the Applicant
)
Applicant)
- and -)
)
)
DAVID GOODIS, Senior Adjudicator,) *Freya Kristjanson*, for the Respondent,
Information and Privacy Commissioner and) David Goodis, Senior Adjudicator,
JANE DOE, Requester) Information and Privacy Commissioner
)
Respondents)
)
) **HEARD:** January 8, 2003

J. MACDONALD J.: (Orally)

[1] At the commencement of the hearing of this judicial review application, counsel for the applicant, the Children's Lawyer raised a preliminary objection without notice to the Court. The objection is that the Information and Privacy Commissioner should not be permitted to address the correctness of the Commissioner's decision in respect of s. 19 of the *Freedom of Information and Protection of Privacy Act*, (hereinafter "FIPPA"). The Commissioner's factum addresses in detail the correctness of this decision. The Requester has not appeared.

[2] In response to the preliminary objection, the Commissioner relied on s. 9(2) of the *Judicial Review Procedure Act* (hereinafter "JRPA") as giving the Commissioner the status of a full party with the right to address all of the matters in issue.

[3] This Court is of the view that the Children's Lawyer's preliminary objection should have been made upon timely written notice and that facta should be delivered, so that the Court may hear fuller argument and give the issue the consideration it deserves. This Court is also of the view that the proper application of s. 9(2) JRPA to the Commissioner, in the circumstances of this case, should be the subject of facta and fuller argument. We order that these steps be taken and these issues be reargued.

[4] For the purposes of the judicial review application which therefore will be heard subsequently, we think it necessary to ensure that the Court has full argument respecting the legal status and role of the Children's Lawyer and its outside counsel, both generally and in the circumstances of this case, and also full argument respecting the role and obligations of counsel, the role and obligations of a litigation guardian for a minor, and the role and obligations of the legal representative of a minor appointed pursuant to the *Child and Family Services Act*, as they relate either to the interpretation of s. 19 FIPPA or to its application herein. We therefore require that amicus curiae be appointed now to assist the Court by addressing these issues, and the issues herein generally, in the event that, following the delivery of written notice and facta and following full argument of the preliminary objection at a later date, the Court is then of the view that the Commissioner ought not to be heard on the judicial review application in respect of the correctness of the decision in issue.

[5] This judicial review application is adjourned to a date to be fixed following the appointment of amicus curiae. The preliminary issues mentioned above shall be addressed at the commencement of that hearing.

[6] We do not address the submission on behalf of the Children's Lawyer that no new matters properly may be raised upon the hearing of the judicial review. This adjournment will afford to the Children's Lawyer the opportunity to address, as it sees fit, any of the allegedly new matters raised herein.

[7] We do not determine the proper scope of the submissions of either the amicus curiae or the Commissioner at the subsequent hearing. That is left to be determined by the hearing panel.

[8] This panel is not seized of the matters to be heard subsequently.

[9] The costs of today are reserved to the panel hearing the judicial review application.

THEN J.
J. MACDONALD J.
C. CAMPBELL J.

Date of Reasons for Judgment: January 8, 2003

Date of Release: January 14, 2003

COURT FILE NO.: 330/02

DATE: January 8, 2003

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**THEN, J. MACDONALD AND C.
CAMPBELL JJ.**

B E T W E E N:

CHILDREN'S LAWYER FOR ONTARIO

Applicant

- and -

DAVID GOODIS, Senior Adjudicator,
Information and Privacy Commissioner and
JANE DOE, Requester

Respondents

ORAL REASONS FOR JUDGMENT

J. MACDONALD J.

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