

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

B E T W E E N:

MINISTRY OF CORRECTIONAL SERVICES

Applicant

- and -

**DAVID GOODIS, Senior Adjudicator,
and JANE DOE, Requester**

Respondents

ENDORSEMENT

The issue before me is whether counsel for the Requester should be permitted access to the documents contained in the portion of the Record sealed by Order of Carnwath J. dated April 22, 2003.

Ms. Blake argues on behalf of the Ministry that the Ministry's application for judicial review is limited to some 19 pages of the total 458 pages in the sealed record (the Commissioner upheld the Ministry's decision not to disclose 439 pages and there is no judicial review brought by the Requester in respect of them). The 19 pages consist of documents that the Ministry argues are protected by solicitor/client privilege. She argues that this is a highly protected privacy interest under s. 19 of the FIPPA; that the Requester's counsel does not need more than a general outline of the nature and description of the documents in question for purposes of arguing the application; and, therefore, that what has become a regular practice of permitting counsel to have access to sealed documentation subject to a confidentiality agreement ought not to be followed in the circumstances of this case.

While the matter is not free from doubt, in the end I am satisfied Ms. Lonsdale ought to be permitted to have access to the Private Record, subject to a confidentiality undertaking, in order to be able to prepare for and argue the application. Counsel for the Ministry is already so entitled pursuant to the

Order of Carnwath J. (a consent order on the part of the IPC and the Ministry). I include all 458 pages of the Private Record because it is not entirely clear to me - notwithstanding the submission that the judicial review is limited to the 19 pages - that the remaining documents in the Private Record, or some of them, may not have relevance in the appeal.

In making this Order I rely on the principles enunciated, and the practice referred to, in such cases as *Fuda v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2790 (Div. Ct., per Lang J.), and *Hunter v. Canada (Consumer and Corporate Affairs)* (1991), 80 D.L.R. (4th) 497 (Fed. C.A.).

There is, of course, no attack on the integrity of Ms. Lonsdale's undertaking. The undertaking provided should be in the form attached, with the addition of an undertaking to the effect that neither Ms. Lonsdale nor her firm has acted in the past for the Requester in relation to matters that might have arisen in relation to the subject matter of the request and will not do so in the future.

Order accordingly.

R.A. Blair R.S.J.

UNDERTAKING

THE UNDERSIGNED UNDERTAKES, as a condition of access to the portion of Record of Proceedings of the Respondent David Goodis, Senior Adjudicator (the "Commissioner") identified as "PRIVATE", to preserve the confidentiality of the contents of that portion of the Record and, in particular:

1. The Undersigned undertakes to maintain in strict confidence, and to ensure the physical security of all contents of the portion of the Record of Proceedings identified as "PRIVATE", and not already in the possession of the Undersigned or his or her client as of the date of this Undertaking, until further order of this Court. It is expressly understood that the undersigned shall not disclose to anyone (except persons employed by counsel), including his or her client, any of the contents of the portion of the Record of Proceedings identified as "PRIVATE", except for those portions already in the possession of the Undersigned or his or her client as of the date of this Undertaking, unless such disclosure is authorized by the Court; and

2. Upon expiry of the time period provided for under the Ontario Rules of Civil Procedure for appeal from the disposition of this Application, the Undersigned undertakes to return to counsel for the Commissioner all copies of the portion of the Record of Proceedings identified as "PRIVATE", as well as all materials referring to any contents of the portion of the Record of Proceedings identified as "PRIVATE" which are subject to this Undertaking, unless the Court order otherwise.