

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

THEN, MEEHAN AND SWINTON JJ.

B E T W E E N:)
)
TORONTO DISTRICT SCHOOL BOARD) *J. Paul R. Howard and Byrdena M. MacNeil,*
) for the Applicant
Applicant)
)
- and -)
)
)
JOHN DOE, Requester and) *John Swaigen and John Higgins, for the*
INFORMATION AND PRIVACY) Respondent, Information and Privacy
COMMISSIONER/ONTARIO) Commissioner/Ontario.
)
Respondents)
)
) **HEARD:** May 28, 2004

THEN J.: (Orally)

[1] Mr. Howard, counsel for the applicant seeks an order of this Court excluding the public from the hearing of this application. His application arises from the fact that the Requester is present in the courtroom. Section 135 of the *Courts of Justice Act* states:

135.(1) Subject to subsection (2) and rules of court, all court hearings shall be open to the public.

(2) The court may order the public to be excluded from a hearing where the possibility of serious harm or injustice to any person justifies a departure from the general principle that court hearings should be opened to the public.

[2] Mr. Howard does not assert there is a serious possibility of harm to any person because of the presence of the Requester. Rather, he asserts that a serious injustice may occur if the Requester remains for two reasons.

[3] First he submits that given the nature of this application involving extensive sealed materials, the continuing presence of the Requester will render the application moot because the subject matter of the application may be revealed during submissions.

[4] We do not accept this argument because it is normal practice for counsel on applications such as this to refrain from directly reading to the Court any of the sealed material, but rather referring the Court to the material, allowing the Court to read the material for itself.

[5] Secondly, counsel for both parties submit that the normal practice referred to above will inhibit the effectiveness of their presentation and will inconvenience the Court.

[6] In our view, experience has shown that the normal practice has served the Court well and has not inhibited the effectiveness of counsel in presenting their argument.

[7] More importantly, we all agree that access to the Court is of super-ordinate value in the administration of justice and must be upheld as s. 135 of the *Courts of Justice Act* requires unless there is a serious risk that injustice will result. In our view, there is no such risk here.

THEN J.
MEEHAN J.
SWINTON J.

Date of Reasons for Judgment: May 28, 2004

Date of Release: June 16, 2004

COURT FILE NO.: 645/02

DATE: May 28, 2004

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B E T W E E N:

TORONTO DISTRICT SCHOOL BOARD

Applicant

- and -

JOHN DOE, Requester and INFORMATION AND
PRIVACY COMMISSIONER/ONTARIO

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ORAL REASONS FOR JUDGMENT

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