

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

Van Camp, Sirois and Campbell JJ.

**KEN RUBIN**

and

**INFORMATION AND PRIVACY COMMISSIONER/ONTARIO**

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E N D O R S E M E N T

The final order of last Friday is not before us for judicial review.

The only issue properly before us for judicial review as a final decision is the question of the interpretation of s. 30 of the Act in the “Interim” order of April 1990.

The question before the Commissioner in April 1990 was whether the applicant on May 16 to 18 1988 was given access under the Act.

In practical terms the question is really whether the institution intended to waive its own rights, and whether it had the power to waive the rights of third parties.

The Commissioner’s decision turned largely on questions of fact as to whether the institution intentionally waived its right to claim exemptions or whether the institution simply intended to help the applicant focus his request under the Act. The Freedom of Information Act does not give the applicant any right to appeal to this Court against findings of fact by the Commissioner. Our jurisdiction is limited to questions of law.

In light of the Commissioner's understanding of the intention of the institution he interpreted s. 30 in such a way as to give the institution and third parties an opportunity to assert their legal rights under the Act.

In concluding that the earlier access was not given under the Act we are not satisfied that the Commissioner erred in these circumstances in his legal interpretation of s. 30 in any way that would attract judicial review.

As to the fees we are not satisfied there was any legal error in the interpretation of the Act or any error in principle in the manner the discretion was exercised.

The application is dismissed without costs.

January 27, 1992

"M.M. Van Camp J."