

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

FARLEY J.

B E T W E E N:

MUNICIPAL PROPERTY ASSESSMENT CORPORATION

Applicant

- and -

TOM MITCHINSON, Assistant Information and Privacy Commissioner, and
SECURITY RECOVERY GROUP INC.

Respondents

- and -

ATTORNEY GENERAL FOR ONTARIO

Intervenor

E N D O R S E M E N T

FARLEY J.:

[1] The motion was for striking out the affidavit and the last of part of para. 2 and the whole of para 14 of the factum of SRGI.

[2] Given the nature of the judicial review of the Privacy Commissioner, I am of the view that the relief requested by MPAC should be granted on the basis of Ontario Hydro v. Information and Privacy Commissioner (Ont.) (1996), 97 OAC 324 (Div. Ct.) at para 4. SRGI has not provided any cogent reasons that this material falls within the exception of jurisdictional error, abuse of process of the tribunal or denial of natural justice.

[3] Counsel have my view as to the inappropriateness of raising the issue of - "fresh evidence" so late in the day after there was agreement that MPAC could validly raise s. 11 argument - legal argument - with no factual basis, said agreement indicated to be mid-December 2003 but that the

affidavit in question here was not provided (or alluded to) before it was served without leave on January 26, 2004.

[4] With respect to costs, there are to be no costs with respect to the Privacy Commissioner but SRGI is to pay costs of \$500 to MPAC forthwith and in no event later than March 2, 2004.

FARLEY J.