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DATE: April 24, 2009

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FROM: Debbie O'Neil for Regional Senior Justice C. Hachland

MESSAGE: Endorsement attached.

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Apr. 23, 2009

Ms B. Kulaszka for applicant/defendants
Mr. J. Katz for Plaintiff/Respondent

This is an application for leave to appeal the order of Kershner J. dated March 23, 2009 ordering the Fournier defendants to file a further and better affidavit of documents so as to disclose the internet e-mail addresses or I.P. addresses and associated subscription data in their possession in relation to the "John Does 1-8" defendants. The latter are users of the Fournier's website who posted what they intended to be anonymous messages, which the plaintiff alleges are defamatory.

FILED SUPERIOR COURT
OF JUSTICE AT OTTAWA
MAR 30 2009
DÉPOSÉ À LA COUR
SUPÉRIEURE DE JUSTICE À OTTAWA

I am persuaded by counsel's submissions that the issue of the existence of a privacy interest in the "anonymous" web postings and in the identity of those making the postings (ie the John Does defendants) as well as the procedural issue of disclosing the identifying information of these individuals in civil proceedings are important public policy issues which are the subject of conflicting jurisprudence.

In this instance Justice Kershner's reasons suggest that disclosure
(over)

Ontario Superior Court of Justice

PROCEEDING COMMENCED AT Ottawa, Ontario

Supplementary Motion Record

Of the Moving Parties (Defendants)
Mark and Constance Fournier
(Motion returnable on April 2, 2009)

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of this identifying information should follow necessarily or automatically from the commencement of the action, as contemplated by the Rules of Civil Procedure. In contrast, Wilkins J. in *IRWIN Toy Ltd. v. Doe* (2000) 12 C.P.C. (5th) 103 advocated a balancing of the privacy rights involved and to the same effect is the decision of von Finkelstein J. in *BMG Canada Inc. v. John Doe* [2004] 3 F.C.R. 241.

In view of the important public policy and procedural issues disclosed by this case and these issues and the jurisprudence which, to an extent, is in conflict, I am of the opinion that the criteria for granting leave to appeal under Rule 62.02(4)(a) is met. Leave to appeal to the Divisional Court from Kershman J.'s order herein is granted. Costs of the leave application reserved to the Court hearing the appeal.

Haddock R.S.J.