

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

*Hartt, Meehan and Kozak JJ.*

**SOLICITOR GENERAL AND MINISTER OF  
CORRECTIONAL SERVICES**

- and -

**TOM MITCHINSON, Assistant Commissioner et al.**

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ENDORSEMENT

This is an application by the Solicitor General et al. quashing order P-1618 made October 7, 1998.

The requester Jane Doe sought access to a copy of 124 pages of a public complaint file relating to a complaint made by the requester and her husband to the Police Complaints Commission in 1992. Although not present, the requester filed a factum which was reviewed by the Court.

The Ministry denied the request, stating that the public complaint file fit within the scope of Section 65(6)3 of the *Act* and therefore excluded.

Counsel for both the Ministry and the Commission agreed that an employment-related matter was involved.

Counsel for the Ministry argued that the amendment of which subsection 65(6) and (7) were a part was passed for the purpose of putting the government into the same position as a present employer with relation to employment-related records. We, are of the opinion, that so classifying the amendment is to state the proposition too broadly. Subsection (3) says "employment-related matters in which the institution has an interest." Ms. Blake argues that all employment-related

records are not subject to the *Act* and that ownership means "ownership or management interest", and that in using the words "in which the institution has an interest," the legislature was excluding employment records of employees of private employers which might for some reason be in the possession of a government institution, for example, the Ministry of Labour. We do not see any merit in this explanation for the use of the phrase in ss. 5(3).

The Commissioner interpreted the words "in which the institution had an interest" in a legally oriented sense.

The Commissioner held that the records in question related to an employment matter in which the institution had an interest - but that six years had passed and there was currently no outstanding interest in the investigation that had the capacity to affect the institutions legal rights or obligations and therefore the records did not fit within the scope of s. 65(6)3 and were subject to the *Act*.

*Re Standard of Review* – It is argued upon behalf of the Ministry that in interpreting s. 65(6) in particular, the Commissioner was adding to his jurisdiction and therefore under the Court of Appeal decision in *Walmsley* the standard of review is correctness. In our view, the records in question were in the control of the Ministry and that the Commissioner, in interpreting his Home statute, and in adopting a pragmatic and functional approach was entitled to deference and a standard of reasonableness applies. Even if we are wrong in this, and the standard is correctness we would dismiss the application. No costs.

March 21, 2000

“E.P. Hartt J.”

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

*Hartt, Meehan and Kozak JJ.*

**ATTORNEY GENERAL FOR ONTARIO**

- and -

**TOM MITCHINSON, Assistant Commissioner et al.**

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ENDORSEMENT

At the request of experienced counsel both for the applicant and the Commissioner the Court heard this application at the same time as File #681/98 and File #209/99. Although the factual situations were obviously different in the three matters, it was argued by counsel that all involved an employment related matter and that the outcomes would be the same depending upon the interpretation the Court placed upon s. 65(6)3 of the *Act*.

The requester appeared in person, adopted the argument of Mr. Challis and in addition made a brief argument based upon s. 65(6)1 but we found no merit and Ms. Blake was not called upon in relation to it.

See endorsement re: file #681/98.

Application dismissed. No costs.

March 21, 2000

“E.P. Hartt J.”

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

*Hartt, Meehan and Kozak JJ.*

**SOLICITOR GENERAL AND MINISTER OF  
CORRECTIONAL SERVICES**

- and -

**TOM MITCHINSON, Assistant Commissioner et al.**

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ENDORSEMENT

At the request of experienced counsel both for the applicant and the Commissioner the Court heard this application at the same time as File #681/98 and File #698/98. Although the factual situations were obviously different in the three matters, it was argued by counsel that all involved an employment related matter and that the outcomes would be the same depending upon the interpretation placed upon s. 65(6)3 by the Court.

See endorsement re: file #681/98.

Application dismissed.

March 21, 2000

“E.P. Hartt J.”