

**ONTARIO COURT (General Division)
DIVISIONAL COURT**

IN THE MATTER OF the Judicial Review Procedure
Act, R.S.O. 1990, C.J.1

AND IN THE MATTER OF the Freedom of Information and
Protection of Privacy Act, R.S.O. 1990, C.F.31

AND IN THE MATTER OF Order P-590 of Anita Fineberg,
Inquiry Officer, Information and Privacy Commissioner/
Ontario, dated November 30, 1993

B E T W E E N :

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
as represented by the Minister of Health**

Applicant

- and -

**ANITA FINEBERG, Inquiry Officer, DR. JOHN GRAY
and DR. MICHAEL KOLIN**

Respondents

E N D O R S E M E N T

By the Court:

This application seeks to review two determinations made by an inquiry officer pursuant to the Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F. 31. The statute lacks a privative clause. Nevertheless, the tribunal is of a permanent nature and has developed substantial expertise in the administration of its core functions. It is therefore to be accorded a substantial measure of curial deference. In our view, a determination should not be interfered with where an officer has given a provision falling within the heartland of the statute a meaning it can reasonably bear. Subsections 2(1)(a), 18(1)(c) and 18(1)(d) are provisions at the core of the tribunal's jurisdiction.

Unfortunately, the officer's interpretation of ss. 2(1)(a), in the circumstances, falls well below any standard of reasonableness and, indeed, is patently unreasonable. The version code is an alpha

character addition to an individual's health card number and results in a new designation unique to that individual. Its uniqueness is why the code was developed, at least in part, as a response to fraudulent claims and the need for enhanced card control. It is therefore entirely unreasonable to conclude the version code is not, when viewed in context, an "identifying number, symbol or other particular assigned to (any) individual" and that it is not "recorded information about an identifiable individual" within the meaning of ss. 2(1)(c). An attributed purpose to statutory language must first be consistent with the language. This language does not leave it open to suggest the definition only embraces a number or symbol assigned to an individual that leads to other personal information. The determination is therefore quashed.

With respect to the officer's s. 18 determination, it is our view that the issues involved must be examined from two perspectives. This the officer did not do.

If she meant to find, as we think she did, that a request by anyone for the version code of any patient could not reasonably be expected to prejudice the economic interests of the institution or to be injurious to the financial interests of the Government of Ontario the decision is patently unreasonable and is to be quashed. It is clear on the evidence that health card fraud is occurring and that the version code system responds to that problem. The very difficulty these two doctors encountered in getting paid demonstrates its effectiveness. It was entirely unreasonable, no matter where the onus lay, to require more having regard to all of the circumstances.

However, at the level of these two doctors other considerations may pertain. Clearly not all requests will involve claims which are suspicious or reasonably related to a fraud problem. Indeed, the Ministry might reasonably require doctors to provide more information about the services or the patients under consideration. Similarly, the doctors would want to advise the Ministry or inquiry officer of these same matters and may have done so.

Unfortunately the officer cast her decision at the most general level of analysis, simply stating at the first page of her decision that the "physicians... were unable, for various reasons, to ascertain

the patient's version code". In other words, she treated this information as immaterial to her determination when instead such evidence was central to the problem before her.

Accordingly, her decision in all respects is quashed. The matter is remitted to her to reconsider in regard to section 18 at the level of these two doctors and the circumstances peculiar to their requests and the Ministry's concerns in respect of precise requests and to now consider the application, if at all, of s.21 of the Act.

CARRUTHERS J.
THEN J.
ADAMS J.

Released: June 23, 1994