

DATE: October 27, 2003
DOCKET: C39677

COURT OF APPEAL FOR ONTARIO

RE: MINISTER OF HEALTH AND LONG TERM CARE
(Applicant/Appellant)(Moving Party) -and- TOM MITCHINSON, Assistant
Information and Privacy Commissioner, and ONTARIO MEDICAL ASSOCIATION
(Respondents)(Responding Parties)

BEFORE: McMURTRY C.J.O., CATZMAN and ABELLA J.J.A.

COUNSEL: Sara Blake for the applicant/appellant

Robert L. Lee for the respondent Ontario Medical Association

Freya Kristjanson for the respondent Tom Mitchinson, Assistant Information and
Privacy Commissioner

HEARD: October 22, 2003

RELEASED October 22, 2003

ORALLY:

On appeal from the order of the Divisional Court (Justices James D. Carnwath, Lawrence W.
Whalen and Barry G. MacDougall) dated December 5, 2002.

ENDORSEMENT

[1] It is common ground that physicians are not "employees" of the provincial government. In our view, however, in reaching the conclusion they did, the Assistant Information and Privacy Commissioner and the Divisional Court read the phrase "labour relations" in s. 65(6)3 of the Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31 ("the Act"), too narrowly. The phrase is not defined in that Act, and its ordinary meaning can extend to relations and conditions of work beyond those relating to collective bargaining. Nor is there any reason to restrict the meaning of "labour relations" to employer/employee relationships; to do so would render the phrase "employment-related matters" redundant.

[2] The relationship between the government and physicians, and the work of the Physician Services Committee in discharging its mandate on their behalf, including provisions for the remuneration of physicians, fall within the phrase "labour relations", and the meetings, consultations, discussions and communications that take place in the discharge of that mandate fall within that phrase as it appears in s. 65(6)3. The result is that the Act does not apply to the records the production of which was ordered by the respondent.

[3] The appeal is allowed, the order of the Divisional Court is set aside and the appellant's application for judicial review is granted. The appellant does not request costs, and we award none.

"R.R. McMurtry C.J.O."

"M.A. Catzman J.A."

"R.S. Abella J.A."