

DENIS RANCOURT
Applicant

- and -

UNIVERSITY OF OTTAWA
Respondent

Court File No.: 17-DC-2279

Court: Swinton, Thorburn, Copeland JJ.

November 22/18

This application for judicial review is moot. The Applicant sought access to a medical report from the respondent University of Ottawa through the Freedom of Information & Protection of Privacy Act, R.S.O. 1990, c.F. 33.

The University refused to release this document & some others, relying on the labour relations & employment exclusion in s. 65(6)3 of the Act. The Information & Privacy Commissioner ("IPC") denied ~~the~~ appeal from denial of access to the ~~document~~ ~~report~~, which led to this judicial review. The University has now provided the Applicant with the medical report without restrictions on confidentiality. As well, the related documents were added, on consent, to the Public Record. Thus, there is no live controversy between the parties about access to the documents.

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

Proceeding commenced at OTTAWA

APPLICANT'S APPLICATION RECORD
(JUDICIAL REVIEW OF IPC TRIBUNAL DECISION)

The Applicant's

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Applicant

FILED SUPERIOR COURT
OF JUSTICE AT OTTAWA

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SEPTEMBER 2017

The Applicant argues that there is a live controversy respecting the constitutionality of s. 65(6)3. We disagree. This proceeding began as a request for access to information to the University. There is no live controversy between the University & the Applicant with respect to the documents sought in the access request. The allegation that the provision of the Act is unconstitutional is not a dispute with the University.

The Court has a discretion to hear an application that is moot. However, this is not an appropriate case to exercise that discretion. The Applicant argues that he has an important constitutional question that should be determined - namely, the constitutionality of s. 65(6)3, which he argues violates ss. 2(b), 7 & 8 of the Charter.

This is not a situation where the issue of constitutionality is amenable to judicial review. Indeed, the Applicant has ongoing access requests ~~to~~ to the University. If s. 65(6)3 is invalid, he can raise the issue in those applications.

Moreover, if he ^{has} ~~has~~ ongoing privacy interests relating to the documents that were in issue, it ^{was} ~~is~~ open to him to raise those privacy issues with the IPC. Those issues are not before this Court.

Finally, the Applicant seeks a declaration of the invalidity

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of s. 65(6)3. However, the writ before the Court is an application for judicial review of a particular IPC decision. The IPC had no jurisdiction to give a broad declaration of invalidity, & it would not be appropriate for the Court to now adjudicate the issue of constitutionality. The constitutional issue must be determined in a particular factual context, & it is not a wise use of judicial resources to determine such an issue in the absence of any live controversy about the release of particular documents.

Accordingly, the application for judicial review is dismissed on the grounds of mootness. Costs to the University fixed at ₹5,000.⁰⁰. The IPC does not seek costs.

K. Anand J.
M. J.
J. J.