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PRIVACY

PERSONAL INFORMATION PROTECTION AND ELECTRONIC DOCUMENTS ACT

Application for judicial review under *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 (PIPEDA), s. 14 concerning study commissioned by respondent regarding overhead expenses incurred by physicians in Ontario — Respondent, Ontario Medical Association, commissioned study to support negotiations with province regarding physicians' financial compensation — Applicants are specialist physicians in province of Ontario; members of Ontario Specialists Association (OSA); are also members of Ontario Medical Association — Office of Privacy Commissioner of Canada (OPC) dismissed complaint by OSA regarding proposed study; concluded that study would not constitute "commercial activity" within meaning of PIPEDA, was therefore beyond scope of legislation — Respondent is not-for-profit corporation recognized by statute (*Ontario Medical Association Dues Act*, 1991, S.O. 1991, c. 51) — Is exclusive representative of Ontario physicians to advocate before Minister of Health and Long-Term Care (Minister) for physicians' professional, personal well-being — Respondent is funded by dues paid by members, not receiving funding from government or corporate interests — Respondent's advocacy includes negotiating compensation, billing arrangements with Minister, specifically Physician Services Agreement (PSA), which sets billing rates for healthcare services across province — In 2019, respondent announced its intention to commission study into physicians' overhead costs — Data was drawn by Statistics Canada (StatCan) from taxation records of respondent's members, as well as their professional corporations, cost associations or partnerships, held by Canada Revenue Agency (CRA) — Personal information disclosed by respondent to StatCan would comprise name, date of birth, gender, primary address, physician speciality — Prior to vote, respondent conferred with OPC regarding proposed study — Was informed that OPC would take no action regarding study because personal information would be used for statistical, or scholarly study or research, for purposes that could not be achieved without its use (PIPEDA, s. 7(2)(c)) — Later, OSA filed complaint with OPC alleging that respondent's proposed study would contravene PIPEDA, s. 6.1, its Principle 4.3 but OPC determined that it lacked jurisdiction over complaint because respondent, as non-profit organization, not considered to be engaged in commercial activities — Whether respondent's proposed study constituted "commercial activity" for purposes of PIPEDA — Applications under PIPEDA, s. 14(1) are determined *de novo* — No deference is owed to OPC's prior determination of issues — "Personal information" defined in PIPEDA, s. 2(1) as "information about an identifiable individual" — Term has very far-reaching scope — Information respondent proposing to disclose to StatCan about its members was "personal information" within meaning of PIPEDA; was intended to permit identification of its members, including members' names, dates of birth, etc. — Personal information respondent intended to disclose about its members to StatCan was for purpose of study — "Commercial activity" defined in PIPEDA, s. 2(1) as any particular transaction, act or conduct or any regular course of conduct that is of commercial character, etc. — Negotiations regarding PSA implicating Minister's exercise of provincial jurisdiction over property, civil rights because they concern physicians' compensation for provincially-funded health services — Only information organization collects because it has commercial need for it is captured by PIPEDA — Primary characterization of activity is dominant factor in assessing its commercial character — Payment of dues to association, without more, is not commercial in nature — OMA's disclosure of physicians' personal information to StatCan for purposes of proposed study would not involve

“exchange, trade, buying and selling” of anything as provided in definition of “commercial activity” — Proposed study was intended to support negotiations with government that could ultimately result in framework that establishes basis for physicians’ future payments, which would be made directly by government to physicians — This was many degrees removed from commercial activity — Proposed study was therefore not “commercial activity” within meaning of PIPEDA; statute thus not applying — Application dismissed.

PARKER V. ONTARIO MEDICAL ASSOCIATION (T-603-23, 2024 FC 667, Fothergill J., reasons for judgment dated May 1, 2024, 15 pp.)