

FINANCIAL POST

Government settlements can remain confidential

Julius Melnitzer October 21, 2010 – 11:27 am

The Ontario Court of Appeal has ruled that confidential mediation and settlement records involving a government institution must not be disclosed under Ontario's Freedom of Information and Protection of Privacy Act even when the subject documents have been prepared by a private party to the litigation.

In *Liquor Control Board of Ontario v. Magnotta Winery Corporation*, the parties reached a settlement mediated under the Rules of Civil Procedure, following which the LCBO received a freedom of information request from an unidentified person who sought access to the complete record of the mediated settlement, including documents that had been prepared for mediation by Magnotta and were in possession of the Crown. The LCBO denied access to these records based on a statutory exemption for documents prepared or used by the Crown in litigation. The Court of Appeal upheld the denial. "There is no reason to treat mandatory and consensual mediations differently, when considering whether they are part of the litigation process," the court wrote. Once litigation was understood to include mediation and settlement, it became apparent that both materials prepared by the Crown and those prepared by Magnotta were exempt from disclosure.

Jill Dougherty of WeirFoulds appeared for the LCBO; Ian Roher of Teplitzky, Colson represented Magnotta; William Challis and Allison Knight were counsel for the Information and Privacy Commissioner; and Leslie McIntosh of the Crown Law Office appeared for the Attorney-General for Ontario.

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