

Case Law Update: Liquor Control Board of Ontario v. Magnotta Winery Corporation

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By Mark Edelstein

Privacy Legislation Privilege

The Ontario Court of Appeal affirmed the Divisional Court's holding that confidential mediation and settlement documents are not required to be disclosed pursuant to the *Freedom of Information and Protection of Privacy Act* (FIPPA). The Information and Privacy Commission ("IPC") allowed disclosure of records relating to a mediation between the LCBO and Magnotta. The IPC held that the mediation was not subject to the disclosure exemption provision in s. 19 of FIPPA, which permits a body subject to FIPPA to refuse to disclose records that are subject to solicitor-client privilege or prepared by or for Crown counsel in preparation for litigation. The IPC decision was overturned by the Divisional Court.

The Court of Appeal affirmed the Divisional Court's decision. The Court held that alternative dispute resolution is an integral part of the litigation process and that common law privilege ought not to be statutorily abrogated absent clear language. The Court of Appeal ultimately rejected the narrow reading of s. 19 of FIPPA that would have limited it to litigation privilege, and held that settlement privilege was also covered by s. 19. As such all the settlement documentation was exempt from disclosure.

This decision affirms the importance of settlement privilege and highlights the courts' continuing attempts to balance the desire to provide access to information while preserving essential privacy and confidentiality interests. WeirFoulds lawyer Jill Dougherty acted for the LCBO in its successful challenge to the IPC's ruling before the Divisional Court.

WeirFoulds^{LLP}

www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035