

Federal Court of Appeal



Cour d'appel fédérale

Date: 20231219

Docket: A-136-23

Citation: 2023 FCA 249

**CORAM: STRATAS J.A.
WEBB J.A.
DAWSON D.J.C.A.**

BETWEEN:

**PREVENTOUS COLLABORATIVE
HEALTH
PROVITAL HEALTH
COPEMAN HEALTHCARE CENTRE**

Appellants

and

CANADA (MINISTER OF HEALTH)

Respondent

Heard at Edmonton, Alberta, on December 19, 2023.

Judgment delivered from the Bench at Edmonton, Alberta, on December 19, 2023.

REASONS FOR JUDGMENT OF THE COURT BY:

DAWSON D.J.C.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Edmonton, Alberta, on December 19, 2023).

DAWSON D.J.C.A.

[1] In 2017, Health Canada received a request under the *Access to Information Act*, R.S.C. 1985, c. A-1 (“Act”). The request sought documents including copies of all audits performed by Alberta Health and shared with Health Canada on private primary health-care clinics that charge

patients annual enrolment and membership fees. The appellant Preventous was notified by Health Canada of the request, and was given the opportunity to make representations about an audit report concerning it that fell within the ambit of the access request.

[2] After receiving Preventous' submission, Health Canada advised that it would be releasing a redacted version of the audit report. In response Preventous, in 2019, commenced an application for judicial review under section 44 of the Act of the decision by Health Canada to disclose the redacted version of the audit report.

[3] As a result of interlocutory motions brought by Preventous, its application for judicial review has not yet been heard on the merits.

[4] This appeal arises out of a motion brought by Preventous, pursuant to Rules 4 and 313 of the *Federal Court Rules*, S.O.R./98-106 and the Court's plenary jurisdiction, to compel production of the following documents:

- A. Any inquiries made by Health Canada to the Alberta Ministry of Health regarding private health care clinics in Alberta;
- B. Any communications or records of communications between the Minister of Health, Alberta Health and [Canada Health Act Division] discussing or relating to the Audit Report; and
- C. Any communications or records of communications between the Minister of Health, Alberta Health and [Canada Health Act Division] relating to private health care clinics in Alberta.

[5] Preventous' motion was dismissed by the Case Management Judge and, on appeal, by a Judge of the Federal Court (2023 FC 791). This is an appeal from the order of the Federal Court dismissing the appeal from the order of the Case Management Judge.

[6] In its application for judicial review, Preventous submits that the audit report should not be disclosed because it is not a document "under the control of" Health Canada within the contemplation of section 4 of the Act. This is argued to be so because Preventous submits that Health Canada did not legally obtain the audit report.

[7] Based on the issues raised in its application for judicial review, the Federal Court correctly noted, at paragraph 35 of its reasons, that the issue before the Court was whether Preventous had demonstrated the relevance of the requested documents to the issue of whether the audit report was under the control of Health Canada.

[8] The Federal Court went on to conclude that:

[38] Preventous has asserted very specific arguments in its written representations (yet, problematically, appearing nowhere in its pleading) as cited in detail at paragraph 34 above as to why Health Canada is allegedly in unlawful possession of the Audit Report. However, no attempt was made by Preventous before the Case Management Judge (or before me) to demonstrate how the Requested Records are relevant to those very specific arguments. Taken as articulated by Preventous, I fail to see how the Requested Documents would be relevant to those arguments, which are grounded primarily in statutory interpretation and constitutional arguments.

[39] Moreover, Preventous has made no attempt to demonstrate how: (a) any Health Canada inquiries regarding clinics (not limited to Preventous) providing uninsured services in Alberta; (b) any communications about such clinics (which

would not be limited to the Audit Report); and (c) any communications discussing or relating to the Audit Report (as opposed to those related to the manner or authority by which Health Canada came into possession of the Audit Report) could possibly be relevant to the issues raised on this application. I find that the overbreadth of the request and the absence of any plausible explanation for the breadth thereof demonstrates that Preventous is engaged in an improper fishing expedition.

[9] On this appeal, Preventous has not demonstrated any error of law, or any palpable and overriding error of fact or mixed fact and law that would warrant our interference with the order of the Federal Court. The Federal Court’s comment about overbreadth, quoted above, in our view must be read fairly and in context and in any event was not material to its ultimate conclusion that the requested documents had not been shown to be relevant.

[10] Therefore, we will dismiss the appeal with costs.

“Eleanor R. Dawson”

D.J.C.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-136-23

STYLE OF CAUSE: PREVENTOUS COLLABORATIVE
HEALTH ET AL. v. CANADA
(MINISTER OF HEALTH)

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: DECEMBER 19, 2023

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BY:** STRATAS J.A.
WEBB J.A.
DAWSON D.J.C.A.

DELIVERED FROM THE BENCH BY: DAWSON D.J.C.A.

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