



Case in Brief: **Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)**

Judgment of February 2, 2024 | On appeal from the Court of Appeal for Ontario  
Neutral citation: 2023 SCC 4

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***The Supreme Court rules that mandate letters delivered by the Premier of Ontario to his cabinet ministers are exempt from disclosure.***

This appeal concerned the issue of whether the public should have access to mandate letters sent from the Premier of Ontario to his cabinet ministers shortly after his party formed government in 2018.

A journalist from the Canadian Broadcasting Corporation (CBC) requested access to 23 mandate letters delivered by the Ontario Premier to each of his cabinet ministers after the 2018 provincial election. The mandate letters set out the Premier's views on policy priorities for the government's term in office. The Cabinet Office declined the journalist's request, claiming the mandate letters were exempt from disclosure under section 12(1) of Ontario's *Freedom of Information and Protection of Privacy Act* (the Act). In general, freedom of information legislation such as this Act strikes a balance between public disclosure and the confidentiality required by the executive to govern effectively. Section 12(1) of the Act protects the confidentiality of records that would reveal the substance of Cabinet's deliberations.

The CBC appealed the Cabinet Office's decision to Ontario's Information and Privacy Commissioner. The Commissioner determined that the mandate letters were not exempt under section 12(1) and ordered their disclosure. He found that the purpose of the Cabinet records exemption was to promote the free and frank discussion among Cabinet members of issues coming before them for decision, without concern for the chilling effect that might result from disclosure of their statements or the material on which they are deliberating. However, in his view, section 12(1) was designed to protect deliberations occurring within Cabinet's policy-making process, not the outcomes of that process – the policy decisions themselves – or mere subjects or topics of deliberation.

Under his interpretation of section 12(1), the Commissioner said the mandate letters were not exempt from disclosure because nothing suggested they were intended to serve, or served, as the basis for discussion by Cabinet as a whole. Moreover, rather than revealing the views, opinions, thoughts, ideas and concerns of ministers, the Commissioner characterized the mandate letters as the endpoint of the Premier's formulation of the policies and goals to be achieved by each Ministry.

The Attorney General of Ontario asked the Ontario Divisional Court to review the Commissioner's decision. The Divisional Court determined that the decision was reasonable. On appeal, a majority of the Ontario Court of Appeal agreed with the Divisional Court. One judge on the Court of Appeal dissented, finding the Commissioner's decision unreasonable in large part because it eroded the sphere of Cabinet privilege that section 12(1) was designed to preserve. The Attorney General of Ontario appealed to the Supreme Court of Canada.

The Supreme Court has allowed the appeal.

**The Commissioner's interpretation of the Cabinet records exemption was too narrow.**

Writing for the majority, Justice Karakatsanis ruled the mandate letters were protected from disclosure under section 12(1) of the Act. She determined that the opening words of the provision mandate a substantive analysis of the requested record to determine whether disclosure of the record would shed light on Cabinet deliberations. A consideration of the text of the Act, purpose, and context lead to the conclusion that the mandate letters are protected from disclosure under section 12(1)'s opening words. The mandate letters reflect the view of the Premier on the importance of certain policy priorities and mark the initiation (rather than the end) of a fluid process of policy formulation within Cabinet, and they are revealing of the substance of Cabinet deliberations.

Justice Karakatsanis concluded: "In approaching assertions of Cabinet confidentiality, administrative decision makers and reviewing courts must be attentive to the vital importance of public access to government-held information but also to Cabinet secrecy's core purpose of enabling effective government, and its underlying rationale of efficiency, candour, and solidarity".

**Breakdown of the decision:** *Majority:* Justice [Karakatsanis](#) allowed the appeal and set aside the Commissioner's order to disclose the mandate letters (Chief Justice [Wagner](#) and Justices [Rowe](#), [Martin](#), [Jamal](#) and [O'Bonsawin](#) agreed) | *Concurring:* Justice [Côté](#) would have reviewed the Commissioner's decision on a standard of correctness, but agreed with Justice Karakatsanis with respect to the outcome of the appeal.

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**Lower court rulings:** [Order](#) (Information and Privacy Commissioner of Ontario) | [Decision on judicial review](#) (Divisional Court, Superior Court of Justice of Ontario) | [Appeal](#) (Court of Appeal for Ontario)

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