

ONTARIO  
SUPERIOR COURT OF JUSTICE  
DIVISIONAL COURT

CARNWATH, MATLOW and JENNINGS JJ.

**B E T W E E N:** )  
)  
KMH CARDIOLOGY AND DIAGNOSTIC ) *William A. Chalmers*, for the Applicant  
CENTRES )  
)  
Applicant )  
)  
- and - )  
)  
)  
DONALD HALE, Adjudicator and JOHN ) *William S. Challis*, for Donald Hale,  
DOE, Requester, and Ministry of Health and ) Adjudicator, Information and Privacy  
Long-Term Care ) Commissioner/Ontario  
)  
Respondents )  
)  
)  
) **HEARD at Toronto:** March 8, 2007

**CARNWATH J.:** (Orally)

[1] The application is dismissed. Our reasons are as follows. The Commissioner found there was a distinct absence of detailed and convincing evidence or explanation from the parties to support their allegations that competitive harm could be expected to result from disclosure of specific information in the record. The inferences and conclusions drawn by the Commissioner concerning the nature of the information were reasonable. Similarly, his conclusions with respect to expectation of harm were reasonable. On the material before him, he was entitled to conclude as he did.

[2] The Commissioner found it unlikely that disclosure would result in reducing incentives to submit proposals, nor did he accept that proposers would limit their submissions in future tenders. He pointed out the financial incentives to submit comprehensive proposals. We find this to be consistent with prior decisions of the Commissioner and of this Court. We find his conclusions reasonable.

[3] We reject the submission that the use of the word “unique” showed the Commissioner to have constricted his analysis. The concept of uniqueness was raised in the submissions of the Ministry. We agree with the statement in paragraph 77 of the Commissioner’s factum, “A tribunal commits no interpretative error by disposing of arguments in the very terms used by the parties advancing them.”

[4] The application record is endorsed: “The application is dismissed. No order as to costs. Oral reasons given in Court by Carnwath J.”

CARNWATH J.  
MATLOW J.  
JENNINGS J.

**Date of Reasons for Judgment: March 8, 2007**  
**Date of Release: March 12, 2007**

**COURT FILE NO.:** 89/05

**DATE:** 20070308

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Care

Respondents

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**ORAL REASONS FOR JUDGMENT**

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**CARNWATH J.**

**Date of Reasons for Judgment:** March 8, 2007  
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