

**ONTARIO COURT (GENERAL DIVISION)
DIVISIONAL COURT**

McMurtry C.J.O.C., Hartt and O'Leary JJ.

**HER MAJESTY THE QUEEN IN THE RIGHT OF ONTARIO
as represented by the MINISTER OF LABOUR**

- and -

DONALD HALE, Inquiry Officer et al.

E N D O R S E M E N T

We are of the view that the Inquiry Officer applied the wrong test in determining whether or not the Ministry's "Prosecution Policy" fell within the exemption contained in section 19 of the Freedom of Information Act. Section 19 provides in part that the document prepared by crown counsel "must have been prepared for use in giving legal advice".

The test applied by the Inquiry Officer was that the document must contain a legal opinion. In our view he erred in not directing his mind to the meaning of the accompanying words "prepared for use" that immediately precede the words "in giving legal advice". It could be argued that the document does not contain specific legal opinions but in our view the document should be characterized as one "prepared for use in giving legal advice". The Order of the Inquiry Officer is therefore set aside.

No order as to costs.

Dated: February 22, 1995

"R. Roy McMurtry C.J.O.C."