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## CASE SUMMARY: ONTARIO COURT FINDS HOSPITAL EMPLOYEE WAS ACTING UNDER THE DIRECTION OF THE HOSPITAL FOR PURPOSES OF DETERMINING WHETHER INSURER OWES DUTY TO DEFEND

The insurer had a duty to defend a hospital employee who was sued for invasion of privacy allegedly arising out of the insured's unauthorized access to medical records of a patient outside the insured's circle of care.

### **Insurance law – Liability insurance – Named insured – Duty to defend – Interpretation of policy**

*Oliveira v. Aviva Canada Inc.*, [2017] O.J. No. 5457, 2017 ONSC 6161, Ontario Superior Court of Justice, October 17, 2017, M. Koehnen J.

A hospital's insurance policy provided coverage to hospital employees for liability arising from breaches of privacy while the employee is "acting under the direction of" the hospital and "only in respect of liability from the operations of the hospital". The applicant was a hospital employee who was sued for invasion of privacy allegedly arising out of her unauthorized access to medical records of a patient outside her circle of care. The applicant sought a declaration that the insurer had a duty to defend and the Court agreed.

The insurer's argument that the employee was not "acting under the direction of" the hospital because the patient whose records were allegedly accessed was not in the employee's circle of care was rejected. The Court also found that the allegations did arise from "operations of the hospital" notwithstanding that the employee was not delivering medical care to the patient.

This case was digested by [Kora V. Paciorek](#), and first posted on Quicklaw and published in the Harper Grey Insurance Law Newsletter. If you would like to discuss this case further, please contact Kora V. Paciorek at [kpaciorek@harpergrey.com](mailto:kpaciorek@harpergrey.com).

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