

Federal Court



Cour fédérale

Date: 20110329

Docket: T-592-10

Citation: 2011 FC 379

Ottawa, Ontario, March 29, 2011

PRESENT: The Honourable Mr. Justice Lemieux

BETWEEN:

M. ROBIN QUINN

Applicant

and

THE PRIME MINISTER OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction and background

[1] In this judicial review application made pursuant to section 41 of the *Access to Information Act* (ATIA), Robin Quinn, who is self-represented, challenges the September 23rd 2008 decision of the Director, Access to Information and Privacy at the Privy Council Office (PCO) denying the information he requested because it could not be disclosed since “it constitutes confidences of the Queen’s Privy Council and has accordingly been withheld pursuant to section 69(1)(f) (draft

legislation) of the Access to Information Act”. Mr. Quinn had requested from the PCO a copy of the report or reports of the examination of the National Capital Commission (NCC) Animal Regulations (the Animal Regulation) proposed to be made by the Governor-in-Council (G-in-C) pursuant to subsection 20 (1) of the NCC Act. These Regulations were enacted by the G-in-C under P.C. 2002-671 on the 25th of April 2002. His March 25th 2008 request sent to the PCO reads:

RE: EXAMINATION OF THE *PROPOSED* NCC ANIMAL REGULATIONS PERSUANT TO THE STATUTORY INSTRUMENTS ACT

Section Three of the Statutory Instruments Act requires the examination of proposed regulations.

In the case of the above regulations this examination should have taken place prior to the Part I Gazetting, August 18, 2001.

My request is for access to a copy of the report or reports of this examination that the PCO may hold.

[2] The subsection 69(1)(f) of the ATIA disclosure exclusion reads:

Confidences of the Queen’s Privy Council for Canada

Documents confidentiels du Conseil privé de la Reine pour le Canada

69. (1) This Act does not apply to confidences of the Queen’s Privy Council for Canada, including, without restricting the generality of the foregoing,

69. (1) La présente loi ne s’applique pas aux documents confidentiels du Conseil privé de la Reine pour le Canada, notamment aux :

[...]

[...]

(f) draft legislation;

f) avant-projets de loi ou projets de règlement;

[Emphasis added]

[Notre soulignement]

[3] Attached to PCO's refusal letter are two pages. The first page reads "Page(s) 000063 to 000118 are excluded pursuant to section 69(1)(f) of the ATIA" The second page reads "Page(s) 000001 to 000062 are not relevant".

[4] The examination of proposed federal regulations is a requirement of the *Statutory Instruments Act* (SIA) particularly its section 3 whose scheme is as follows:

- (i) Subsection 3(1) of SIA requires "where a regulation-making authority proposes to make a regulation, it shall cause to be forwarded to the Clerk of the Privy Council (the Clerk), three copies of the proposed regulations in both official languages";
- (ii) Subsection 3(2) of SIA states that upon receipt "the Clerk in consultation with the Deputy Minister of Justice, shall examine the proposed regulations to ensure that the proposed regulation is" (a) authorized by statute, (b) does not constitute an unusual or unexpected use of authority, (c) does not trespass unduly on existing rights and freedoms set out in the Charter of Rights and Freedoms and the Canadian Bill of Rights, and (d) the form and draftsmanship of the proposed regulations are in accordance with established standards; and
- (iii) Subsection 3(3) of SIA provides that "when a proposed regulation has been examined as required by subsection (2) the Clerk shall advise the regulation-making authority that the proposed regulation has been so examined under subsection 3(2) and shall indicate any matter referred to in that subsection to which "in the opinion of the Deputy Minister of Justice, based on the examination, attention of the regulation-

making authority should be drawn”. [Emphasis added]

[5] I also mention that on the same day Mr. Quinn made his access request to PCO, he made an identical request to the NCC and was advised by the NCC’S Access Coordinator, on April 23rd 2008, the NCC “does not hold any reports with regards to the examination of the proposed NCC Animal Regulations pursuant to the SIA”. Mr. Quinn took no further action with respect to NCC’s answer.

[6] On the other hand, on September 29th 2009, Mr. Quinn did take the opportunity accorded to him under the ATIA by making a complaint to the Information Commissioner regarding the PCO’s refusal of his access request for a copy of the report or reports of the examination of the proposed NCC Animal Regulation.

[7] The Information Commissioner investigated the complain and on March 12, 2010, provided the following response to Mr. Quinn:

Subsection 69(1) provides that the Act does not apply to confidences of the Queen’s Privy Council for Canada. The Act also provides that our office may not see any of the Information which the government claims to be a Cabinet confidence. Within that significant constraint, during the course of our investigation of your complaint and the undertaking of second review by the Privy Council Office (PCO’s) Cabinet Confidence/Counsel (CC/C), PCO CC/C confirmed to our satisfaction that the withheld material continues to constitute excluded Cabinet confidence material. The material which remains excluded pertains to:

- records the purpose of which is to brief ministers of the Crown in relation to matters that are before, or are proposed to be brought before Council or that are the subject of communications or discussions referred to in paragraph 69(1)(d) (paragraph 69(1)(e)); or
- draft legislation (paragraph 69(1)(f)).

Consequently, I will record as not substantiated your complaint about PCO's application of section 69 of the Act.

[Emphasis added]

[8] For completeness I set out the text of section 69(1)(d), (e) and (g) and subsection 69(2) of the ATIA:

**Confidences of the Queen's
Privy Council for Canada**

**Documents confidentiels du
Conseil privé de la Reine
pour le Canada**

69. (1) This Act does not apply to confidences of the Queen's Privy Council for Canada, including, without restricting the generality of the foregoing,

69. (1) La présente loi ne s'applique pas aux documents confidentiels du Conseil privé de la Reine pour le Canada, notamment aux :

(d) records used for or reflecting communications or discussions between ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;

d) documents employés en vue ou faisant état de communications ou de discussions entre ministres sur des questions liées à la prise des décisions du gouvernement ou à la formulation de sa politique;

(e) records the purpose of which is to brief ministers of the Crown in relation to matters that are before, or are proposed to be brought before, Council or that are the subject of communications or discussions referred to in paragraph (d);

e) documents d'information à l'usage des ministres sur des questions portées ou qu'il est prévu de porter devant le Conseil, ou sur des questions qui font l'objet des communications ou discussions visées à l'alinéa d);

(g) records that contain information about the contents of any record within a class of records referred to in paragraphs (a) to (f).

g) documents contenant des renseignements relatifs à la teneur des documents visés aux alinéas a) à f).

[Emphasis added]

[Notre soulignement]

[9] Section 69(2) defines “Council” in the following term:

Definition of “Council”

(2) For the purposes of subsection (1), “Council” means the Queen’s Privy Council for Canada, committees of the Queen’s Privy Council for Canada, Cabinet and committees of Cabinet.

[Emphasis added]

Définition de « Conseil »

(2) Pour l’application du paragraphe (1), « Conseil » s’entend du Conseil privé de la Reine pour le Canada, du Cabinet et de leurs comités respectifs.

[Notre soulignement]

[10] The Information Commissioner advised Mr. Quinn that he had a right under section 41 of the ATIA to apply to the Federal Court for a review of PCO’s decision to deny him access to the requested record which he commenced by Notice of Application for Federal Review on April 15, 2010.

II. Context

[11] As noted, the Animal Regulations were made on April 25, 2002 by the Governor General in Council by P.C. 2002-671 upon recommendation of the Minister of Canadian Heritage, responsible for the NCC. The Animal Regulations were registered with the Registrar of Statutory Instruments that same day as SOR/2002-164. They were published in Part II of the Canada Gazette on May 8, 2002. They contain a very extensive Regulatory Impact Analysis Statement (RIAS) found between page 1039 to 1054 of the Canada Gazette.

[12] The Animal Regulations were also pre-published in the Canada Gazette Part I on August 18, 2001 and invited interested persons to make representations within 60 days. Mr. Quinn told me he

did not make any representations as he was not aware of them. The purpose of the Animal Regulations is to prescribe rules governing domestic animals on NCC lands whether leased or unleased. The Animal Regulations set out rules stipulating in what areas an animal must be under leash; what is appropriate behaviour for an animal such as a dog and “stoop and scoop requirements”.

[13] This Court had the benefit of a recent Federal Court decision by my colleague Madam Justice Simpson involving Mr. Quinn and these very same Animal Regulations (see *Quinn v. Canada (Minister of Justice)*, 2008 FC 376 dated March 25, 2008).

[14] In that case, Mr. Quinn was challenging a decision by the Federal Department of Justice’s (DOJ) Access to Information and Privacy (ATIP) Coordinator who refused to provide him with two categories of documents he was seeking namely (a) the draft Animal Regulations that were sent to the Special Committee of Council (a Cabinet Committee) and (b) the various communications from Justice lawyers to either the Clerk of the Privy Council or to the NCC.

[15] Counsel for the Respondent, who also appeared in the case before Justice Simpson, states in his memorandum before me that Mr. Quinn abandoned his request for copies of the draft Animal Regulations at the 2008 hearing and pursued only the issue of the communications from Justice lawyers to either the Clerk of the Privy Council or the NCC.

[16] At paragraph 11 of her decision, Justice Simpson framed the issue before her as follows:

The issue is whether the communications which contained the advice given by the Justice Lawyers to the NCC during the drafting and

examination of the Animal Regulations and the communications which contained the advice given to the Clerk by or on behalf of the Deputy Minister of Justice during the examination are exempt under section 23 of the Act on the basis of subject and solicitor-client privilege.

[Emphasis added]

[17] During the hearing before her, Justice Simpson was concerned there was no evidence in the record describing whether and, if so, in what manner there had been compliance with section 3 of the *Statutory Instruments Act* (the SIA). She required of the Respondent to file an affidavit describing the examination undertaken for the Animal Regulations. The Respondent produced the affidavit of Tania Tooke.

[18] I can do no better than to cite paragraphs 8 to 10 of Justice Simpson's decision as to what Tania Tooke said in her affidavit:

[8] Further to the Court's request, the Respondent filed an affidavit sworn by Tania Tooke on October 31, 2007 (the Tooke Affidavit). Therein, the Respondent set out the steps followed during the drafting, examination and enactment of the Animal Regulations. The Applicant declined an opportunity to make further oral submissions on the Tooke Affidavit and instead filed written submissions dated December 6, 2007.

[9] The Tooke Affidavit showed that the significant events in the development of the Animal Regulations were as follows:

1. In December of 1999, through its legal counsel, the NCC provided draft Animal Regulations to the Regulations Section of the Legislative Services Branch of the Department of Justice (the Regulations Section).
2. The examination of the Animal Regulations under section 3 of the SIA was assigned to two Department of Justice lawyers in the Regulations Section.

3. From December 1999 to May 2001, the Justice Lawyers drafted and undertook the Examination in consultation with the NCC's legal staff.
4. The NCC also sent the Animal Regulations and its draft of the Regulatory Impact Analysis Statement (RIAS) to the Regulatory Affairs Division of the Regulatory Affairs and Orders in Council Secretariat (the Secretariat). It represents the Clerk of the Privy Council in the regulatory process. Officials in the Regulatory Affairs Division conducted an initial review of the Animal Regulations to ensure that they complied, inter alia, with the requirements of subsection 3(2) of SIA.
5. Once the Regulations Section [of DOJ] completed its Examination, the Animal Regulations were "blue stamped". Blue Stamping, in this case, served to communicate to the Secretariat [at PCO] that the Regulations Section has completed the Examination and that there were no outstanding issues. A covering letter dated May 30, 2001 to the NCC from the Regulations Section [of DOJ] confirmed that the Examination had been conducted.
6. The Minister of Canadian Heritage then signed the Animal Regulations. This had the effect of formally recommending that the Governor in Council pre-publish them in the Canada Gazette.
7. The NCC then sent the "blue stamped" copies of the Animal Regulations to the Secretariat and both its Regulatory Affairs Division and its Order in Council Division (together the Divisions) verified the completion of the Examination.
8. Then the Animal Regulations and related documents were sent to a Cabinet Committee called The Special Committee of Council (the Special Committee). It authorized the pre-publication of the Animal Regulations in the Part I of the Canada Gazette. That occurred on August 18, 2001.
9. The Animal Regulations were "blue stamped" a second time on February 13, 2002. Each page bore a Department of Justice logo and the words: "Examined by the Regulations Section of the Department of Justice -- Examiné par la Section de la réglementation du ministère de la Justice".

10. The "blue stamped" copies received a recommendation for enactment from the Minister of Heritage and were returned to the Secretariat with all the supporting documents. Both Divisions again reviewed them. In that review, the Regulatory Affairs Division acted on the Clerk's behalf to ensure that there had been an examination under subsection 3(2) of the SIA. The Secretariat then prepared a briefing note for the Special Committee and it recommended to the Governor General that the Animal Regulations be made.
11. The Governor General then made the Animal Regulations. Thereafter, they were registered with the Registrar of Statutory Instruments on April 25, 2002 as S.O.R./2002-164 and were published in the Canada Gazette Part I on Wednesday, May 8, 2002.

[10] Based on this evidence, it is my view that the Justice Lawyers performed two functions in tandem. They completed the drafting of the Animal Regulations for the NCC and, while drafting, they conducted the Examination pursuant to subsection 3(2) of the SIA.

[Emphasis added]

[19] Justice Simpson went on to hold as follows:

Applying these principles to this case, I agree with the Applicant that there was no solicitor and client relationship between the NCC and the Clerk. However, that conclusion does not dispose of the matter because, in my view, the facts of this case disclose two solicitor and client relationships. The first existed between the Clerk and the Justice Lawyers. When the Clerk was provided with their advice about whether the Animal Regulations complied with subsection 3(2) of the SIA, it was a privileged communication. The second solicitor and client relationship was formed between the NCC and the Justice Lawyers when they advised the NCC about compliance with subsection 3(2) of the SIA in the context of drafting the Animal Regulations. Those communications were also privileged.

[Emphasis added]

[20] She dealt with another submission made by Mr. Quinn at paragraph 22:

The Applicant has also asked me to determine whether the Examination was properly conducted and whether the Clerk was

obliged to issue a report when the examination was complete. However, I have concluded that these issues are not relevant because, under s. 41 of the Act, this application is limited to a review of the Respondent's decision to withhold the Exempt Material.

[Emphasis added]

[21] Tania Tooke's affidavit is part of the Respondent's record in this case. It has a number of documentary exhibits including (1) the 2nd edition of a document issued in 2001 by the PCO entitled "Guide to Making Federal Acts and Regulations" (the Guide). That document makes the following points.

[22] First, it identifies the main participants in the federal regulatory process as:

- (i) The authority which makes the regulation stating such authority is usually the G-in-C on the advise of the Privy Council which is usually exercised by the Special Committee of Council but may be another Cabinet Committee such as the Treasury Board;
- (ii) The Minister and the officials in the sponsoring department;
- (iii) The Clerk of the Privy Council;
- (iv) The Regulatory Affairs and Orders in Council Secretariat of the Privy Council Office;
- (v) The Deputy Minister of Justice;
- (vi) The Regulations Section of the Department of Justice; and
- (vii) The Treasury Board Secretariat.

[23] The Guide makes it clear as set out in the SIA, both the Clerk of the Privy Council and the Deputy Minister of Justice have a role when it comes to the examination of "regulations" which is referred in Section 2 as meaning "a statutory instrument made in the exercise of legislative power conferred by or under an Act of Parliament". It states the Clerk is supported in his/her role by the Regulatory Affairs and Orders in Council Secretariat (RAOIC) of PCO which "is responsible for

monitoring, coordinating and advising on regulatory and Orders in Council (O in C), issues and policies and their consistency with economic, social and federal-provincial policies”. It states the Secretariat provides support to the Special Committee of Council (SCC) with respect to regulatory and O in C matters. As noted the Guide says the Secretariat is split into two divisions; the Regulatory Affairs Division and the Orders in Council Division.

[24] More specifically the Guide indicates:

The prime responsibilities of the Regulatory Affairs Division include:

- the monitoring of regulatory proposals
- the provision of substantive support to SCC through analysis, briefing, and advice with respect to regulatory proposals; and
- support for the implementation and development of the *Regulatory Policy*.

In more specific terms, it reviews each regulatory proposal from an overall policy perspective and may request additional information or analyses from the sponsoring department prior to the proposal being submitted to the SCC for consideration.

The Orders in Council Division's main responsibilities include:

- the management of the approval process for all Orders in Council, regulations, and other statutory instruments;
- the provision of secretariat services to the SCC;
- the provision of advice on the use of Orders in Council and/or Instruments of Advice;
- the production and distribution of Orders in Council;
- the registration and publication of regulations in Part II of the *Canada Gazette* (see http://canada.gc.ca/gazette/gazette_e.html); and

- the maintenance of records of approved Orders in Council, the Consolidated Index of Statutory Instruments, and a number of Oath Books (see http://canada.gc.ca/howgoc/oic/oic_e.html)

[Emphasis added]

[25] The Guide then speaks to the tasks of the Deputy Minister of Justice under the SIA which, as noted, are carried out by the Regulations Section of DOJ which examines all proposed regulations submitted by departments and agencies to ensure compliance with the SIA and specifically its section 3. It adds:

When it has finished its examination, the Regulations Section stamps the draft regulations. If the solution found for any legal problems in the file involves some legal risk, the Regulations Section writes to the department or agency explaining what the risk is. If serious legal risk issues remain unsettled, the Regulations Section reports its concerns to the Clerk of the Privy Council.

[Emphasis added]

III. The Position of the Parties

a) The applicant

[26] Mr. Quinn made a number of written submissions which may be summarized as follows:

- (i) The examination of the proposed Animal Regulations by the Clerk under subsection 3(2) of the SIA does not constitute a confidence of the Queen's Privy Council because section 3 of the SIA does not require nor is it intended to create a report that is considered by Cabinet or prepared for Cabinet discussion. Section 3 of the SIA addresses common standards for all regulations and not the substantive policy behind or the content of a proposed regulation. Such examination does not address issues that would be the concern or subject-matter of Cabinet discussions, he submits.
- (ii) He says the Clerk's examination is not undertaken at the direction of Cabinet, is not required by the SIA to be provided to Cabinet but directs the Clerk to provide

comments to the regulation-making authority which he states in this case is the NCC, not Cabinet itself (my emphasis).

- (iii) Being an exception to the right of access provided for in the ATIA, section 69 should be interpreted narrowly and, specifically, its paragraph (f) should not be interpreted as a stand-alone category that makes all forms of draft legislation, a Cabinet confidence. He argues that to be included as a Cabinet confidence, the draft legislation that must be prepared for, discussed or reviewed by Cabinet itself. He argues that the Clerk's examination itself is not draft legislation; it is information about draft legislation.
- (iv) He further argues that under section 3 of the SIA the Clerk does not examine draft legislation but proposed legislation with "proposed" meaning a regulation to be made and a draft legislation (regulation) means its preliminary written version.
- (v) He further submits that before section 69 of the ATIA can be applied, the respondent should be required to provide the same information as would be required for the Clerk to issue a certificate under section 39 of the *Canada Evidence Act* (CEA). He has not done so because he has filed no affidavit in this Court that identifies the information for which a confidence is claimed as is required of a section 39 certificate nor has the Clerk in this case issued a section 39 (CEA) certificate claiming the records of his examination of the Animal Regulations contains a confidence of the Queen. He says the respondent has not forwarded the records of such examination to this Court for its review. As such he submits, this Court has no basis to conclude paragraph 69(1)(f) of the ATIA has been properly invoked and the respondent has failed to meet its burden under section 48 of the ATIA.
- (vi) Lastly he argues, citing the Supreme Court of Canada's decision in *Babcock v Canada (Attorney General)* [2002] 3 SCR 3 (*Babcock*), the respondent was required to balance the need for confidentiality and the public interest to access and that he has not done so.

b) The respondent

[27] The principal arguments raised by the Attorney General of Canada (the AG) on behalf of the respondent are:

- (i) The proposed draft Animal Regulations and their examination by the Clerk are exempt from production under subsection 69(1) of the ATIA because they were prepared for Cabinet consideration and were actually put to Cabinet for consideration and decision as part of the pre-publication process for Part I of the Canada Gazette and their subsequent enactment by the Governor-in-Council.
- (ii) The facts in the judicial review application decided by Justice Simpson are the same as in this case in terms of the procedure which was followed leading to the enactment of the amendments to the Animal Regulations. Justice Simpson's findings on this procedural history are findings of fact which require judicial comity from this Court particularly since Mr. Quinn did not appeal that decision and, more importantly, abandoned the argument before Justice Simpson on the issue whether the proposed Animal Regulations were Cabinet confidences. Moreover, Justice Simpson found as a fact the draft Animal Regulations and related documents were sent to the Special Committee of Council.
- (iii) In the instant case, there is no separate report of the examination of the proposed regulations by the Clerk, that is, apart from the blue-starred proposed regulation itself. Subsection 3(3) of the SIA only requires the Clerk to advise the regulation-making authority if during the examination a matter arises in respect of which, in the opinion of the Deputy Minister of Justice, attention should be drawn to that authority. The fact the draft regulation was blue-starred by DOJ confirms the Deputy Minister of Justice had no such concerns. Moreover, such was the finding by Justice Simpson.
- (iv) There is no need for a separate certificate by the Clerk as required by section 39 of the CEA. The ATIA defines what a confidence of the Queen's Privy Council is and does so in the same terms as section 39 of the CEA. Moreover, the Information

Commissioner was satisfied as a result of his investigation that the non-disclosed records of the Clerk's examination were such confidences.

- (v) The important feature in this case is the fact that the Governor-in-Council was the regulation-making authority who acted on the advice of the SCC to whom the Clerk sent a briefing note and recommended its pre-publication, and, after comments were received, its subsequent enactment. These were Justice Simpson's findings. It is arguable however that if the regulation maker was an institution other than the Governor-in-Council such as the CRTC the Clerk's examination would not constitute draft legislation. This issue has no import in this case as clearly the Clerk's examination was before the SCC.

IV. Analysis

a) The Standard of Review

[28] There is no dispute between the parties that the correctness standard applies since the critical question is a legal one i.e. whether PCO's Access Director properly invoked the exclusion clause in section 69(1) of the ATIA.

b) Discussion and Conclusions

[29] I agree with Mr. Quinn that the AG took an overly narrow view of the scope of his access request. He was seeking the records of the examination by the Clerk of the Privy Council of his examination of the proposed regulations. He was not seeking the blue-starred proposed Animal Regulations which were subsequently published in Part I of the Canada Gazette and then enacted by the Governor-in-Council after comments were received from the public.

[30] I further agree with Mr. Quinn the Clerk had a statutory duty to examine the proposed draft regulations quite apart from the examination which was made by the Regulations Section of DOJ and led to the blue stamp evidencing the fact the proposed regulations were examined by DOJ as required by the SIA. The documentary evidence before me demonstrates the purpose the Clerk's examination is not to duplicate the examination by DOJ but to ensure that such examination has taken place, that issues raised by the Deputy Minister of Justice have been resolved but ,more importantly, that the regulatory policy of the Government of Canada as reflected in the RIAS which is not part of the proposed regulation has been complied with. The evidence is clear that the Clerk is the institution that advises the SCC on this point.

[31] I also agree with him that the blue-stamp draft regulations do not necessarily equate to the records of the examination by the Clerk of his examination of the proposed draft Animal Regulations. As he observed, the PCO Access Director refused to release 53 pages of documentation of the Clerk's examination.

[32] Nevertheless, I must dismiss Mr. Quinn's judicial review application for the following reasons:

- (i) His evidentiary record is non-existent as to what transpired in the Clerk's examination of the proposed regulations either before authorization was obtained from the SCC to pre-publish the proposed regulations or the steps that had to be followed before the Governor-in-Council exacted the Animal Regulations. On the other hand, he is stuck with the findings made by Justice Simpson which are relevant to the process followed by the Clerk in his examination of the very same Animal Regulations and subsequent

advice to the SCC and to the Governor-in-Council. Those steps clearly show a Cabinet Committee considered and advised on the making of the proposed regulations. Those steps are by legislative definition and at common law a confidence of the Queen's Privy Council whose requirement of confidentiality is obvious in the view of Chief Justice McLachlin at paragraph 18 of her reasons in *Babcock*, above. Under section 39 of the CEA it is the function of the Clerk of the Privy Council to protect Cabinet Confidences and this alone. His power of certification may be reviewed (See *Babcock* at para 39).

- (ii) Second, I agree with counsel for the respondent that there is no need for a separate section 39 CEA certification. The ATIA defines in a non limitative way, what is a confidence of the Queen's Privy Council. The enumerations under section 69(1) are only examples of such confidences. If a particular access request falls within the definition of a confidence of the Queen's Privy Council, the right of access is not contemplated because the ATIA does not apply to such request. In other words, the ATIA is self contained in its operation and does not require the support of section 39 of the CEA.

- (iii) Third, I do not see any merit in this case in the argument by Mr. Quinn that a proposed regulation is not the same as draft legislation. It is well-known that regulation making is delegated legislation i.e. delegated rule-making.

- (iv) Fourth, the critical facts of this case is that the maker of the Animal Regulations is the Governor-in-Council, not the NCC as Mr. Quinn would have it. The Governor-in-Council is an institution which acts on the advice of Cabinet or a committee thereof as is the case here. The Clerk's examination was part of that process.

[33] On a final note, Mr. Quinn, after the Court had taken the matter under reserve, brought to the Court's attention the recent decision of the Federal Court of Appeal in *Appleby-Ostroff v Canada (Attorney General)* 2011 FCA 84 with particular attention focused on its paragraph 34. In my view that case is not relevant because the respondent sought section 39 CEA protection without the Clerk's certificate. The refusal to disclose documents related to an access request is not, as expressed above, dependent on section 39 but flows from the requirements of the ATIA itself.

JUDGMENT

THIS COURT’S JUDGMENT is that this judicial review application is dismissed, with costs.

“François Lemieux”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-592-10

STYLE OF CAUSE: M. ROBIN QUINN v THE PRIME MINSITER OF CANADA

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: December 15, 2010

REASONS FOR JUDGMENT: LEMIEUX J.

DATED: March 29, 2011

APPEARANCES:

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Ms. Helene Robertson

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