Federal Court  Cour fédérale

Date: 20120712

Dockets: T-146-11
T-147-11

Citation: 2012 FC 877

Ottawa, Ontario, July 12, 2012

PRESENT: The Honourable Madam Justice Gleason

Docket: T-146-11

BETWEEN:

THE INFORMATION COMMISSIONER OF CANADA

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

Docket: T-147-11

AND BETWEEN:

THE INFORMATION COMMISSIONER OF CANADA

Applicant

and

THE MINISTER OF JUSTICE OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] These files involve applications by the Information Commissioner of Canada [the Commissioner] under section 42 of the *Access to Information Act*, RSC, 1985, c A-1 [ATIA or the Act] for review of the respondents' refusal to disclose a protocol entered into by the respondents in January of 2002, entitled "Principles to Implement Legal Advice on the Listing and Inspection of RCMP Documents in Civil Litigation" [the Protocol]. The Commissioner also requests that a confidentiality order, applicable to large portions of these files, be lifted.

Background to the applications

[2] In 2006, Ms. Suzanne Boudreau made disclosure requests to both the Royal Canadian Mounted Police [RCMP] and the Department of Justice [DOJ] under the ATIA, requesting disclosure of the Protocol. After a period of internal consultation and discussion between the RCMP and the DOJ, both respondents refused to disclose the Protocol, taking the position that it fell into the exemptions under sections 23 and 21(1)(a) of the ATIA. These sections provide government institutions the discretion to refuse to disclose any record which contains information that is "subject to solicitor-client privilege" (section 23) or any record which contains information that is "advice or recommendations developed by or for a government institution or a minister of the Crown" (paragraph 21(1)(a)).

[3] Following the refusals, Ms. Boudreau made a complaint to the Commissioner under section 30 of the ATIA, alleging that the respondents' refusals violated the provisions of the Act. The Commissioner conducted an investigation and in late August 2010 issued two reports (one involving the RCMP, the other involving the DOJ) in which she determined that Ms. Boudreau's

complaints were well-founded and, accordingly, that the respondents ought to have disclosed the Protocol. Thereafter, the Commissioner made the present applications to this Court.

[4] In the course of conducting her investigation, the Commissioner obtained disclosure of the Protocol and of a number of other documents, including documents exchanged between the RCMP and the DOJ (or reflecting discussions between their employees) regarding the positions the respondents intended to take in response to Ms. Boudreau's disclosure requests. On June 15, 2011, Prothonotary Tabib issued an order in each of these files, providing that large portions of the record would be treated as confidential and limiting access to the confidential material to the Court, the parties, their counsel and advisors "until further order of the Court". In her orders, Prothonotary Tabib specifically contemplated that the ultimate determination of whether any portion of the confidentiality orders would subsist following the determination of these applications was a matter that would be decided by the judge hearing the merits of the applications.

The standard of review

[5] The parties concur and the case law firmly establishes that in cases such as the present there are two potentially relevant issues: first, whether the records at issue, as a matter of law, fall within the exception in either section 23 or paragraph 21(1)(a) of the ATIA; and, second, whether the government institution properly exercised the discretion it possesses under these sections in considering whether to disclose a record that falls within the exemptions. The parties also concurred and the case law likewise firmly establishes that the standard of review to be applied to the first inquiry is that of correctness and to the second inquiry is that of is reasonableness (see e.g. *Attaran v Canada (Foreign Affairs)*, 2011 FCA 182 at paras 7, 18, 337 DLR (4th) 552; *Canada (Information*

Commissioner) v Canada (Minister of Industry), 2001 FCA 254 at paras 38-39, 45 [2001] FCJ No 1327 [*Telezone*]; *Blank v Canada (Minister of Justice)*, 2009 FC 1221 at para 31, 373 FTR 1).

The parties' positions

[6] The Commissioner asserts that the Protocol is not covered by solicitor-client privilege and does not constitute advice or recommendations within the meaning of paragraph 21(1)(a) of the ATIA. She alleges in the alternative that if the Protocol is found to either constitute a privileged communication or advice or recommendations within the meaning of the exemptions in the Act, these applications should nonetheless be granted as neither the RCMP nor the DOJ properly exercised the discretion they possess under the ATIA in considering whether or not to disclose the Protocol.

[7] In support of the Commissioner's principal ground, counsel for the Commissioner argues that the Protocol is not subject to solicitor-client privilege and does not come within the scope of the exemption contained in paragraph 21(1)(a) of the ATIA because the Protocol does not constitute advice but, rather, is an agreement entered into between representatives of the respondents, in their executive capacities, to reflect the manner in which both institutions will govern themselves in litigation where disclosure of documents obtained by the RCMP under its criminal investigative authority might be sought in civil litigation. In support of this argument, the Commissioner highlights several facets of the Protocol, which she submits lead to the conclusion that the Protocol cannot constitute advice.

[8] In this regard, she first asserts that it is clear from the evidence that the Protocol was negotiated between the respondents following provision of a legal opinion by the DOJ to the RCMP on the matters to which the Protocol applies. Counsel for the Commissioner submits that, by definition, advice (and especially legal advice) cannot be the subject of negotiation and, indeed, it would be unethical for counsel to negotiate the substance of their advice with their clients. Second, the Protocol does not provide any advice at all; rather, it is written in imperative language and casts obligations on both parties (including the RCMP, the putative client) to take certain defined steps when the RCMP is in possession of documents obtained through its criminal investigative powers which are relevant to civil litigation against the Crown in Right of Canada. Third, the Protocol is signed by *both* the RCMP and the DOJ whereas advice would not typically be signed by the party to whom it is given.

[9] Counsel for the Commissioner makes two further points in support of the inapplicability of the solicitor-client privilege exemption. She notes, first, that the Protocol was signed after the notation "Confidential Solicitor-Client Privileged Friday, 21 December 2001" was placed on it and that, while the draft Protocol might well be subject to privilege, the final version is not. Finally, counsel asserts that the record demonstrates there was a wide distribution of the Protocol over the intranet in both the RCMP and the DOJ that belies an intention to treat the document as confidential, which is one of the essential elements of a privileged communication. Counsel draws an analogy between the Protocol and several other memoranda of understanding [MOUs] which are publicly available between the Federal Prosecution Service [FPS] (a portion of the DOJ) and various clients, namely, the MOUs between the FPS and Canada Revenue Agency Respecting the Conduct of Investigations and Prosecutions of Offences under Canada's Revenue Statues, between

the RCMP and the FPS Respecting the Conduct of Criminal Investigations and Prosecutions and between the Commissioner of Competition and the Director of Public Prosecutions (the former name for the FPS) with respect to the conduct of criminal investigations and prosecutions of offences under the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act* and the *Precious Metals Act*. Counsel argues that, like these other MOUs, the Protocol should be disclosed.

[10] The respondents, on the other hand, take the position that the Protocol falls within the exemptions contained in both section 23 and paragraph 21(1)(a) of the ATIA and that the RCMP and DOJ properly exercised the discretion they possess under the ATIA.

[11] More specifically, in respect of the Commissioner's principal argument, the respondents assert that the position taken by the Commissioner is unduly formalistic and places unwarranted emphasis on the format of the Protocol but ignores its substance. In this regard, counsel for the respondents notes the evidence establishes that the RCMP sought advice from the DOJ regarding its responsibilities in respect of documentary disclosure in civil litigation in those circumstances where it is in possession of documents obtained pursuant to its criminal investigative powers. That advice was eventually provided through the form of a formal legal opinion. Thereafter, the Protocol was developed to provide guidance to the various employees in the DOJ and the RCMP, who might be faced with situations to which the Protocol applies. As the Protocol does nothing more than reflect the advice given by the DOJ, counsel argues it would be a true triumph of substance over form to find it to not constitute advice merely due to the way in which it is drafted. Counsel asserted that there would be no dispute that the Protocol fell within the section 23 and paragraph 21(1)(a)

exemptions in the ATIA if, as opposed to being a signed agreement, the Protocol instead recorded the advice given and directed employees in the RCMP and the DOJ to follow it. He thus asserts that the Commissioner has improperly focused on the format as opposed to the content of the Protocol and that both exemptions apply because the Protocol does constitute advice.

[12] Both parties cited a substantial number of authorities in support of their positions (with over 50 cases being referred to). I have referred to those that I find to be relevant below. In addition to their positions on the primary issues, the parties also made detailed submissions regarding the subsidiary issue of whether or not the respondents properly exercised the discretion they possessed under the ATIA, and their written materials also contained submissions on terminating the confidentiality orders issued by Prothonotary Tabib. During the hearing, however, counsel for both parties concurred that the issue of confidentiality would be best dealt with by further written submissions, following release of the Court's Judgment and Reasons for Judgment on the merits of the Information Commissioner's applications.

[13] For the reasons set out below, I have determined that these applications must be granted because the Protocol is neither subject to solicitor-client privilege nor does it contain advice or recommendations developed by or for a government institution or a minister of the Crown within the meaning of paragraph 21(1)(a) of the ATIA. Rather, it is an agreement between the DOJ and the RCMP reflecting their respective roles and responsibilities in situations where the RCMP is in possession of documents obtained through its criminal search powers that might be relevant in civil litigation. In light of this determination, it is not necessary for me to consider the Commissioner’s alternative argument regarding the unreasonableness of the exercise of discretion by the respondents

because they possessed no such discretion. Indeed, during the hearing of this matter, counsel for the Commissioner submitted that in the event I were to rule in the Commissioner's favour on her primary position, it would not be necessary for me to consider the alternative arguments regarding the alleged improper exercise of discretion.

[14] The following issues, therefore, arise in this matter:

1. Does the Protocol contain information that is subject to solicitor-client privilege; and

2. Does the Protocol contain information that is advice or recommendations developed by or for a government institution?

Does the Protocol contain information that is subject to solicitor-client privilege?

[15] Solicitor-client privilege is not defined in the ATIA; accordingly, the, common-law test is applicable to determine whether a document is privileged and thus immune from disclosure under the Act (see e.g. *Stevens v Canada (Prime Minister)*, [1997] 2 FC 759, [1997] FCJ No 228, aff'd [1998] 4 FC 89 (FCA), at para 5 [*Stevens*]; *Élomari v Canada Space Agency*, 2006 FC 863 at para 29, [2006] FCJ No 1100). Solicitor-client privilege encompasses both litigation privilege and legal advice privilege. Litigation privilege applies to documents and communications prepared in contemplation of or during the conduct of litigation with respect to the conduct of the case. Legal advice privilege, on the other hand, applies to communications between lawyers and their clients for the purpose of obtaining legal advice. Here, the only privilege claimed is legal advice privilege.

[16] The test applicable to determining whether or not a document or communication is subject to legal advice privilege was summarized by Justice Dickson in *Solosky v The Queen*, [1980] 1 SCR

821, 105 DLR (3d) 745 at para 28 [*Solosky*], as requiring the establishment of three elements: first, that what is involved is a communication between a lawyer and his or her client; second, that the communication in question involved the seeking or provision of legal advice; and, third, that the parties intended the communication to be treated confidentially. The burden for establishing each of these three elements lies with the claimant of the privilege and must be met on a balance of probabilities (see e.g. Alan W Bryant, Sidney N Lederman & Michelle K Fuerst, *Sopinka, Lederman & Bryant: The Law of Evidence in Canada*, 3d ed (Markam, Ont: LexisNexis, 2009) at s 14.43; *McCarthy, Tétrault v Ontario* (1993), 95 DLR (4th) 94, 12 CPC (3d) 42 (Ont Prov Div) at para 12; *R v Harris*, 1989 CarswellOnt 2755 at para 8).

[17] Legal advice privilege may exist between a lawyer employed as in-house counsel and the corporation which employs the lawyer or between a government lawyer (who would often be a member of the DOJ in the case of the federal government) and the department or other governmental entity to which the lawyer gives advice (see e.g. *R v Campbell*, [1999] SCJ No 16, [1999] 1 SCR 565 at para 49 [*Campbell*]; *Pritchard v Ontario (Human Rights Commission)*, 2004 SCC 31 at para 21, [2004] 1 SCR 809 [*Pritchard*]). Not all communications between a lawyer and his or her client are privileged. For example, provision of purely business advice by in-house counsel or purely social interactions between counsel and their clients will not constitute privileged communications (see e.g. *Campbell* at para 50).

[18] Much of the modern jurisprudence has indicated that solicitor-client privilege is to be generously construed as counsel for the respondent correctly notes. For example, in *Descôteaux et al v Mierzwinski*, [1982] 1 SCR 860, [1982] SCJ No 43 [*Descôteaux*], the Supreme Court of Canada

determined that legal advice privilege would extend to a legal aid application that an individual fills out in order to seek legal advice through the legal aid system, unless a recognised exception to the doctrine of solicitor-client privilege is applicable. (On the merits of that case, the privilege was held to be inapplicable because the case concerned an allegation of fraud in applying for legal aid, and privilege does not apply where the communications in issue are either criminal in themselves or were made with a view to obtaining legal advice to facilitate the commission of a crime.) In *Descôteaux*, Justice Lamer, writing for the Court, stated the following with respect to legal advice privilege at p 875 [citing to SCR]:

> 1. The confidentiality of communications between solicitor and client may be raised in any circumstances where such communications are likely to be disclosed without the client's consent.
>
> 2. Unless the law provides otherwise, when and to the extent that the legitimate exercise of a right would interfere with another person's right to have his communications with his lawyer kept confidential, the resulting conflict should be resolved in favour of protecting the confidentiality.
>
> 3. When the law gives someone the authority to do something which, in the circumstances of the case, might interfere with that confidentiality, the decision to do so and the choice of means of exercising that authority should be determined with a view to not interfering with it except to the extent absolutely necessary in order to achieve the ends sought by the enabling legislation.
>
> 4. Acts providing otherwise in situations under paragraph 2 and enabling legislation referred to in paragraph 3 must be interpreted restrictively.

[19] To somewhat similar effect, in *Stevens* this Court determined, and the Federal Court of Appeal affirmed, that legal advice privilege extended to accounts of solicitors tendered to the Privy Council Office by commission counsel.

[20] In *Pritchard*, the Supreme Court of Canada held that a legal opinion provided by counsel to the Human Rights Commission was immune from disclosure because it was privileged. In so deciding, Justice Major noted at para 16 that:

> Generally, solicitor-client privilege will apply as long as the communication falls within the usual and ordinary scope of the professional relationship. The privilege, once established, is considerably broad and all-encompassing. In *Descôteaux*… the scope of the privilege was described, at p. 893, as attaching "to all communications made within the framework of the solicitor-client relationship, which arises as soon as the potential client takes the first steps, and consequently even before the formal retainer is established." The scope of the privilege does not extend to communications (1) where legal advice is not sought or offered, (2) where it is not intended to be confidential, or (3) that have the purpose of furthering unlawful conduct... [citations omitted].

[21] Likewise, in *Canada (Privacy Commissioner) v Blood Tribe Department of Health*, 2008 SCC 44 at para 10, [2008] 2 SCR 574 [*Blood Tribe*], Justice Binnie, writing for the Court, noted that legal advice privilege "… is now unquestionably a rule of substance applicable to all interactions between a client and his or her lawyer when the lawyer is engaged in providing legal advice or otherwise acting as a lawyer rather than as a business counsellor or in some other non-legal capacity." He accordingly held that legislative language that could be interpreted broadly to impinge upon legal advice privilege must be narrowly construed (at para 11).

[22] Legal advice privilege is afforded such a high degree of protection because it is one of the cornerstones of our legal system and of the rule of law. As stated by Justice Major in *R v McClure*, 2001 SCC 14 at para 2, [2001] 1 SCR 445:

> […] This privilege is fundamental to the justice system in Canada. The law is a complex web of interests, relationships and rules. The integrity of the administration of justice depends upon the unique role of the solicitor who provides legal advice to clients within this

> complex system. At the heart of this privilege lies the concept that people must be able to speak candidly with their lawyers and so enable their interest to be fully represented.

[23] Counsel for the respondents asserts that once a solicitor-client relationship exists, all communications that occur between the solicitor and the client are privileged and, accordingly, as there was a solicitor-client relationship between the DOJ and the RCMP in respect of the issues covered by the Protocol, the Protocol must also be privileged. I do not agree. The case law does not recognize such a sweeping scope for legal advice privilege, and it is erroneous to equate the need to construe exceptions to legal advice privilege narrowly with an expanded definition of what types of communications may attract privilege in the first place. Where, as here, what is in issue is whether a document is privileged (as opposed to a situation where an exemption to privilege is claimed to apply), the court must apply the criteria from *Solosky*, which require that each communication in respect of which privilege is invoked be examined individually.

[24] In *Solosky* at para 28, Justice Dickson noted that "… privilege can only be claimed document by document, with each document being required to meet the criteria for privilege…" The *Solosky* test for privilege has been consistently applied and, contrary to what counsel for the respondent asserts, the case has not been overturned or overtaken by subsequent jurisprudence. In its recent decisions in *Blood Tribe* and *Pritchard* (both cited above) the Supreme Court of Canada relied upon and applied the test from *Solosky*. Likewise, this test has been consistently applied by this Court and the Federal Court of Appeal (see e.g. *Telus Communications Inc v Canada (Attorney General)*, 2004 FCA 380 at para 11, [2004] FCJ No 1918; *Stevens* (FCA) at paras 19-21; *Abi-Mansour v Canada (Revenue Agency)*, 2012 FC 376 at para 2; *Slansky v Canada (Attorney General)*, 2011 FC 1467 at para 37, 211 ACWS (3d) 288).

[25] In applying the tripartite test from *Solosky* to the Protocol, it is my view that the Protocol fails to meet the second branch of the test in that it is not a communication involving the seeking or provision of legal advice. As counsel for the Commissioner correctly notes, the Protocol was negotiated; legal advice is not the subject of negotiation between solicitor and his or her client. In addition, the Protocol is signed by both the putative lawyer (the DOJ) and the putative client (the RCMP); a communication providing or seeking legal advice is not typically signed by both the client and the lawyer. Most importantly, though, the Protocol on its face is in no way concerned with the seeking or provision of legal advice and does not contain any advice. Rather, it is an agreement which is drafted mandatory language and purports to cast obligations on *both* the DOJ and the RCMP. In other words, in the agreement, the parties have moved past the stage of seeking or providing advice and have entered into a document that reflects their understandings as to their respective roles and obligations regarding the way in which they will operate when the RCMP is in possession of documents, obtained through its criminal investigative powers, that might be relevant in civil litigation against the federal Crown. In this regard, it is no different from the other MOUs counsel for the applicant referred to or, indeed, from any other agreement that the DOJ might enter into with any other branch of government or entity.

[26] This is evident from the purpose clause in paragraph 4 of the "whereas clauses" of the Protocol, which provides that the Protocol is "… intended to provide a mechanism to enable the Attorney General of Canada and the RCMP to discharge their respective roles when the RCMP has documents in its criminal investigative files that may be relevant civil litigation involving the federal Crown as a party". This clause clearly reflects that the Protocol is and is intended to be an agreement, detailing the two entities' understandings as to their respective roles and obligations, as

opposed to a piece of legal advice or a communication involved with the seeking or provision of legal advice.

[27] Counsel for the respondents asserts that the Protocol is on all fours with the instructions to counsel referred to in *Ministry of Community and Social Services v Cropley et al* (2004), 70 OR (3d) 680, Order PO-2719 and Order PO-2784, which were found to be privileged and thus exempt from disclosure under Ontario access to information legislation. I disagree and view the documents in those cases as being fundamentally different from the Protocol. The Ontario cases all involved requests for disclosure of standing instructions and advice to counsel regarding the way in which litigation was to be conducted, which were drafted by in-house counsel for the Ministry and were intended to be provided to counsel retained to act on behalf of the Ministry. Here, on the other hand, the Protocol does not provide advice or instructions, but, as noted, reflects an agreement between the DOJ and the RCMP regarding their respective roles and responsibilities.

[28] The fact that the Protocol was marked "Confidential and Solicitor-Client Privileged", prior to being signed is not in any way determinative of whether or not it constitutes a privileged communication. In this regard, it is self-evident that a mere claim of privilege over a document does not render it subject to solicitor-client privilege (see e.g. *British Columbia (Securities Commission) v S (BD)*, 2003 BCCA 244 at para 45, 226 DLR (4th) 393; *Ferlatte v Ventes Rudolph Inc*, [1999] QJ No 2735, JE 99-1704 (Qc Sup Ct) at para 13). In addition, as counsel for the Commissioner correctly notes, drafts of agreements or pleadings (shared between lawyer and client) are typically privileged, but the privilege lapses when the final agreement is signed (or when the draft agreement is exchanged with the other party). For example, in *In Re David Sokolov*, [1968] CTC 414, 68 DTC

5266 (MCQB), an unexecuted version of an agreement (exchanged between a lawyer and his client) was found to be privileged, but the Court noted at para 20 that had it been signed, it would not have been privileged. (See also *Simpson v The Queen*, [1996] 2 CTC 2687, [1996] TCJ No 391 at para 70; *Dixon v Canada (Deputy Attorney General)*, [1991] OJ No 1735, [1992] 1 CTC 109 (Ont Sup Ct) at subpara 36(h) to similar effect).

[29] The Protocol, therefore, fails to meet the second portion of the test from *Solosky* as it does not constitute a communication involving the seeking or provision of legal advice. Given this determination, it matters not whether or not the parties intended to treat the Protocol as being a confidential document as each of the criteria from *Solosky* must pertain in order for a document to be subject to legal advice privilege.

Does the Protocol contain information that is advice or recommendations developed by or for a government institution?

[30] Paragraph 21(1)(a) of the ATIA, allows for the exemption from disclosure of documents that contain information that is "advice or recommendations" developed by or for a government institution.

[31] The purpose of the exemption in paragraph 21(1)(a) of the ATIA has been stated to be the "removing [of] impediments to the free and frank flow of communications within government departments and ensuring that the decision-making process is not subject to the kind of intense outside scrutiny that would undermine the ability of government to discharge its essential functions" (*Telezone*, cited above, at para 51; see also *Canadian Council of Christian Charities v Canada (Minister of Finance)*, [1999] 4 FC 245, 168 FTR 49 at paras 30-32). In *Telezone*, the Federal Court

of Appeal noted that "advice" is a broader concept than recommendation and would include expressions of opinion on policy-related matters, except those of a largely factual nature (at paras 50 and 52). A recommendation, on the other hand, sets out a suggested course of action to the government institution.

[32] It is common ground between the parties that the RCMP is a government institution under the ATIA. However, they differ as to whether or not the Protocol constitutes "advice". For the same reasons that the Protocol does not constitute legal advice, it likewise does not represent advice given to the RCMP and, therefore, is not protected from disclosure under paragraph 21(1)(a) of the ATIA. In this regard, as noted above, the Protocol lacks the hallmark of advice in that as opposed to containing advice on how to deal with documents in question, it is rather an agreement between the DOJ and the RCMP, setting out their respective roles and responsibilities. Moreover, in reading the Protocol, one has no idea as to whether or not it actually reflects the advice that the DOJ gave to the RCMP on the issue. Thus, its disclosure would in no way limit the free and frank flow of information essential to the decision-making process in government and would not harm the interests that the exemption in paragraph 21(1)(a) of the ATIA is designed to protect.

[33] Counsel for the respondent argues that the Protocol is akin to a document found to fall within the scope of the paragraph 21(1)(a) exemption in *Telezone*. The document in question in the *Telezone* case was a memo from a senior departmental official to the Minister, setting out advice and incorporating the Minister's decision. Telezone argued that at least that portion of the document which reflected the final decision ought to be disclosed as it was no longer advice. The argument was rejected because the documents in question contained both advice and a record of the final

decision, which could not be excised from each other. The Court of Appeal, however, noted that if the final decision had been contained in a separate document, it might well be subject to disclosure under the Act, stating that "[t]he situation might well have been different if, after the receipt of the official's report, a separate document had been created setting out the bases of the Minister's decision…" (at para 74).

[34] Effectively, what we have here is a situation where a separate document was created, which may or may not reflect the advice that was given. The Protocol, therefore, does not fall within the exemption contained in paragraph 21(1)(a) of the ATIA.

[35] In light of the foregoing, these applications will be granted and the respondent will be required to disclose the Protocol because it does not fall within either of the claimed exemptions under the ATIA.

Request for removal of the Confidentiality Order

[36] As noted, the parties jointly requested that they be allowed to file written submissions on the issue of what portions of the record should remain confidential following my decision on the merits as their positions will be impacted by the decision on the merits. This approach makes sense. Accordingly, counsel for the parties shall consult with each other to agree upon the dates for exchange of their submissions and shall inform the Court of their agreement (or inability to reach an agreement on the dates for exchange of their submissions on the confidentiality issue) by no later than September 7, 2012.

Costs

[37] The parties shall file submissions on costs by no later than September 7, 2012 of no more than 10 pages. Each party may have two weeks to file a reply of up to 5 pages to the other's costs submissions.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. These applications are granted;

2. The respondents shall disclose the Protocol to Ms. Boudreau;

3. The parties shall advise the Court by no later than September 7, 2012 of whether they have agreed on dates for the exchange of submissions respecting what portions of the record shall remain confidential;

4. The parties shall file costs submissions of no more than 10 pages by no later than September 7, 2012 and may file replies to each other's costs submissions, if they wish, of no more than 5 pages by no later than September 21, 2012.

"Mary J.L. Gleason"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	T-146-11 and T-147-11
STYLE OF CAUSE:	*T-146-11, The Information Commissioner of Canada v The Minister of Public Safety and Emergency Preparedness* *T-147-11, The Information Commissioner of Canada v The Minister of Justice Canada*
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	April 24, 2012
REASONS FOR JUDGMENT AND JUDGMENT:	GLEASON J.
DATED:	July 12, 2012

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