

Federal Court of Appeal



Cour d'appel fédérale

Date: 20130206

Docket: A-287-12

Citation: 2013 FCA 27

**CORAM: BLAIS C.J.
NOËL J.A.
PELLETIER J.A.**

BETWEEN:

PAUL ABI-MANSOUR

Appellant

and

**CANADA REVENUE AGENCY and
CANADIAN HUMAN RIGHTS COMMISSION**

Respondents

Heard at Ottawa, Ontario, on February 6, 2013.

Judgment delivered from the Bench at Ottawa, Ontario, on February 6, 2013.

REASONS FOR JUDGMENT OF THE COURT BY:

NOËL J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on February 6, 2013)

NOËL J.A.

[1] This is an appeal and a cross-appeal from a decision of the Federal Court wherein Tremblay-Lamer J. (the Federal Court judge) upheld an order of Prothonotary Tabib (the Prothonotary) denying Mr. Paul Abi-Mansour's (the appellant) request to obtain the disclosure of redacted parts of a document belonging to the Canadian Human Rights Commission (the CHRC) on the basis that its

content was protected by the solicitor-client privilege. The Federal Court judge also refused to give effect to CHRC's argument that the Prothonotary erred in failing to order that a similarly protected document which had been inadvertently communicated to the appellant be returned to it. This refusal is the subject matter of the cross-appeal.

[2] In support of his appeal the appellant made a number of arguments two of which merit attention. First, he submits that it was not open to the Courts below to confirm the existence of the privilege without reviewing the contents of the communication (*Canada v. Solosky*, [1980] 1 S.C.R. 821 and *Procter & Gamble Co. v. Nabisco Brands Ltd.* (F.C.A.), [1989] F.C.J. No. 208). It is common ground that the decision of both the Prothonotary and the Federal Court judge was reached on the basis of affidavit evidence rather than by a review of the unredacted document itself.

[3] The appellant further asserts that if the documents do in fact reveal privileged communications, an exception to the claimed privilege applies in this case having regard to the "trickery", "sham contrivance" and "deliberate suppression of the evidence" by the CHRC (appellant's memorandum at paras. 48, 57 and 58).

[4] Addressing this last contention, we are satisfied that the Federal Court judge properly declined to give effect to it given the unsubstantiated and unsupported nature of these allegations (Reasons, para. 3).

[5] As to the first contention, this Court directed the CHRC to have available for the Court's review at the hearing of the appeal the document in issue in a sealed envelope. We have reviewed

the document in question and are satisfied that the redacted parts are covered by the solicitor-client privilege. We should add for the benefit of the appellant that the redacted parts do not support the above described allegations of wrong doing which he levels against the CHRC. This suffices to dispose of the appeal.

[6] Turning to the cross-appeal, the Federal Court judge declined to issue an order that the appellant return to the CHRC the other document which was inadvertently communicated to him. She did so both because the CHRC was not a party in the proceeding before her and because it had failed to bring forth the appropriate motion (Reasons, para 7).

[7] The first objection has been cured by the direction issued by Stratas J.A. on August 7, 2012 pursuant to paragraph 328(1)(a) of the *Federal Courts Rules*, SOR/98-106 requesting that the appellant name the CHRC as a respondent since it is a party adverse in interest in the underlying proceeding before the Federal Court.

[8] The second objection however remains whole. The Federal Court judge is the master of the procedure in matters before her. Relief is obtained by way of motion and given that the CHRC had not appealed the decision of the Prothonotary, it was entirely appropriate for her to require that the CHRC bring forth the appropriate motion before an order compelling the return of the document could be issued. Absent an error on the part of the Federal Court judge, there is no ground for our intervention. It follows that the cross-appeal cannot succeed.

[9] Given the divided result, no order is made as to costs. An order will also issue preserving the confidentiality of the contents of the sealed envelope which now forms part of the record.

"Marc Noël"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-287-12

STYLE OF CAUSE:

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COMMISSION

PLACE OF HEARING:

Ottawa, Ontario

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DELIVERED FROM THE BENCH BY:

NOËL J.A.

APPEARANCES:

Pau Abi-Mansour

APPEARING ON HIS OWN
BEHALF

Daniel Puolin
Sarah Pentney

FOR THE RESPONDENT
CANADIAN HUMAN RIGHTS
COMMISSION

SOLICITORS OF RECORD:

Litigation Services Division
Ottawa, Ontario

FOR THE RESPONDENT
CANADIAN HUMAN RIGHTS
COMMISSION