



T-224-97

OCT 23 1997

Between:

KARLHEINZ SCHREIBER,

Applicant,

- and -

THE ATTORNEY GENERAL OF CANADA,

Respondent.

**REASONS FOR ORDER**

**ROULEAU, J.**

On October 1, 1997, at Vancouver, British Columbia, I entertained a motion on behalf of the respondent who seeks to further adjourn these proceedings pending the determination of the appeal to the Supreme Court of Canada in *The Attorney General of Canada v. Schreiber* (S.C.C. No. 26039).

The applicant was originally involved in the alleged lawsuit between the Department of Justice and The Right Honourable Brian Mulroney and as a result these proceedings were initiated by way of an originating notice of motion filed with the Court on February 7, 1997. The relief sought is primarily directed to the Minister of Justice or his delegate to deliver a letter to the Swiss authorities withdrawing and revoking a request for assistance dated September 29, 1995, which had been forwarded to the Swiss authorities by the Minister's delegate; the pleading further requested that all books, papers, records and other documents seized and now held by the Swiss authorities be returned forthwith to the applicant. The Minister's letter resulted in a search and seizure of this applicant's bank accounts and other related documents.

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Following some initial interim proceedings between these parties and the filing of the applicant's motion record on June 17, 1997, the Respondent moved for an order adjourning further action pending the determination of the application for leave to appeal to the Supreme Court of Canada in the case involving the *Attorney General of Canada v. Schreiber*; and, if the leave was granted, pending the determination of the appeal. By order dated June 20, 1997, the application for adjournment was denied and the matter, suggested by the order of the Associate Chief Justice, was to be set for hearing as close as possible to October 21, 1997. It was further disclosed in this order directed by the Associate Chief Justice that "Either party is at liberty to apply to adjourn the hearing of this matter on the basis of developments in the *Attorney General of Canada v. Schreiber*" (Supreme Court of Canada No. 26039).

Subsequent to the issuing of this order counsel for the respondent advised that the Supreme Court of Canada granted the leave to appeal on September 4, 1997, and as a result of this development filed this further notice of motion to adjourn pending the outcome in the Supreme Court of Canada of what he described as related proceedings .

In support of this application, the affidavit evidence filed discloses that though a letter of assistance was forwarded to the Government of Switzerland in September of 1995, all documents seized have remained in the hands of Swiss authorities. They have not been disclosed in Canada, nor has there been any further interference with the applicant Schreiber; he retains complete access to his bank accounts in Switzerland. In argument counsel suggests that the applicant has not advanced any claim for damages; that he is primarily seeking *mandamus*, that the Minister direct a letter to the Swiss authorities withdrawing his letter of assistance; that this matter should remain in abeyance pending the outcome of the decision from the Supreme Court of Canada for a number of reasons: that it is vexatious and a waste of the Court's time, that the costs implicated could be

excessive and unnecessary to both parties; that Mr. Schreiber is not presently in any way adversely affected; that problems he may have encountered in the past such as the expense of retaining counsel in Canada as well as Switzerland, will remain unchanged; that there is in place a "suspension order" and all further actions of search and seizure have been abrogated. Finally, he suggests that the matter will probably proceed before the Supreme Court of Canada in the spring of 1998 and that a decision from it will more than likely render this application academic.

It was argued by counsel for Mr. Schreiber that the relief being sought in this particular application is distinct from the matter that is going to be heard in the Supreme Court of Canada; that in fact Mr. Schreiber is seeking relief from a ministerial decision, *mandamus*, directing the Minister to forward a letter to the Swiss authorities withdrawing his letter of request for assistance dated September 29, 1995, and the delivery up of all documents that are being presently retained by the Swiss authorities. He further submits that this originating application had to be brought by his client in order to vindicate his reputation; that what is to be decided by the Supreme Court of Canada is not germane to the present application and should proceed to a hearing because the balance of convenience favours his client. I was then directed to some jurisprudence supporting the proposition that no further adjournment should be granted. Counsel refers the court to *Beloit Canada Ltd. v. Valmet Oy* (1987), 12 F.T.R. 267 wherein Dubé, J. of this Court outlined a series of reasons why adjournments should not be granted. Also referred to is a decision of Muldoon, J. in *Cree Regional Authority v. Robinson et al.* (1992), 46 F.T.R. 193 in which he refers to certain legal principles that must be adhered to before staying proceedings.

The grounds for the appeal to the Supreme Court of Canada from the decision of the Federal Court of Appeal are the following:

That the Court of Appeal erred in law in holding that prior Canadian judicial approval, based upon "reasonable grounds on oath", is required before Canadian

officials can request a foreign state to assist in an investigation by using its laws to search for, and seize, records kept or maintained within its territory.

I have read the decision of the Federal Court of Appeal and it appears to me that it dealt with the following issues:

- should the standards, applicable in Canada, to obtaining a warrant to effect a search and seizure be adhered to by the authorities before directing a letter of assistance to a foreign government;
- are section 8 of the *Charter* privacy rights infringed by the procedure adopted by the authorities;
- does the protection of the *Charter* have an inherent extraterritorial application;
- was the respondent's security against renewable search and seizure infringed by the letter requesting assistance.

There is presently in place an order that protects this applicant from further intrusion by the Minister; no documents have been disclosed to Canadian authorities; the Swiss bank accounts remain unincumbered; there can be no further adverse action respecting this applicant's rights or interests; the jurisprudence relied upon by the respondent dealing with adjournments were cases involving stays of execution after plaintiffs had been successful and are therefore not particularly applicable to this proceeding.

If one looks to the issues that were determined by the Federal Court of Appeal and the grounds of appeal to the Supreme Court of Canada which will eventually be determined, I am satisfied that they are so related to this application that one could almost characterize this application as *sub judice*. I am persuaded that not to grant the adjournment would be an unwarranted imposition of the court's resources.

In conclusion I am of the view that a decision on the issue presently before the Supreme Court of Canada will render this exercise academic.

The motion is granted - no order as to costs.

(Sgd.) "P. Rouleau"

Judge

October 3, 1997  
Vancouver, British Columbia

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**COURT NO.:** T-224-97

**STYLE OF CAUSE:** KARLHEINZ SCHREIBER

- and -

**THE ATTORNEY GENERAL OF  
CANADA**

**PLACE OF HEARING:** Vancouver, BC

**DATE OF HEARING:** October 1, 1997

**REASONS FOR ORDER OF ROULEAU, J.**

**DATED:** October 3, 1997

**APPEARANCES:**

**Mr. Robert Hladun, Q.C.** for Applicant

**Mr. David Frankel, Q.C.** for Respondent

**SOLICITORS OF RECORD:**

**Hladun & Company** for Applicant  
**Vancouver, BC**

**George Thomson** for Respondent  
**Deputy Attorney General of Canada**

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