

Federal Court



Cour fédérale

Date: 20100716

Docket: T-555-10

Citation: 2010 FC 753

Ottawa, Ontario, July 16, 2010

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

ANTON OLEYNIK

Applicant

and

**THE PRIVACY COMMISSIONER OF CANADA,
MINISTER OF JUSTICE
AND ATTORNEY GENERAL OF CANADA**

Respondents

REASONS FOR ORDER AND ORDER

[1] This an appeal from two orders issued by Prothonotary Richard Morneau on May 27, 2010.

[2] In one order, Prothonotary Morneau denied the Applicant's motion to be served outside Canada and to be heard by means of electronic communication. In the other order, Prothonotary Morneau ruled that the Minister of Justice and Attorney General of Canada be removed as respondent from all proceedings relating to the present case.

[3] Here are the facts that led to those orders. The underlying proceeding is an application for judicial review of two decisions rendered by the Privacy Commissioner of Canada in response to complaints made by the Applicant against the Social Sciences and Humanities Research Council of Canada.

[4] That application was originally filed against the Respondent herein and the Minister of Justice and Attorney General of Canada, and it was served upon both of them on April 12, 2010.

[5] On April 12, 2010, the Applicant also served, upon both of them, a motion for:

- i) Personal service outside Canada;
- ii) Hearing by means of electronic communication;
- iii) Alternatively, a stay of proceedings until applicant's return.

[6] The Applicant based his motion on the fact that he would be outside Canada from May 2010 until August 2011. The Applicant provided two email addresses that he would use while outside Canada and an address in Moscow where he planned to reside during a portion of his stay abroad.

[7] The Attorney General of Canada filed a notice of appearance and a motion for an order to remove the Minister of Justice and Attorney General of Canada as Respondent in all proceedings relating to this case. Both court documents were served upon the Applicant at the address in St-John, Newfoundland that he had provided in his application for judicial review.

[8] The Privacy Commissioner of Canada filed a notice of appearance and a notice of opposition to the Applicant's motion to be served outside Canada and to be heard by means of electronic communication.

[9] The Applicant contends that all documents should have been served upon him at the address in Moscow that he had provided and states that he never received the documents that were served upon him in St-John, Newfoundland.

[10] The Applicant also contends that the two orders contain reviewable errors. I disagree. I am of the view that, whatever the applicable standard of review may be (*R. v. Aqua-Gem Investments Ltd.*, [1993] 2 F.C. 425), that the prothonotary did not commit any error.

a) *The Order dismissing the Applicant's motion to be personally served outside Canada and to be heard by means of electronic communication*

[11] The Applicant contends that the order issued contains a factual error where it refers to the Respondent's written representations in which the Respondent stated that the only address that the Applicant had provided for service was his address at Memorial University in St-John, Newfoundland. Prothonotary Morneau's order reads in part as follows:

The Court notes with respect to the first remedy sought by the applicant, to wit personal service outside Canada, that the Commissioner's counsel makes the following remarks at paragraph 6 of her written representations; remarks that the applicant should pay attention to and that the parties shall try to implement somehow in order that the parties could communicate with efficiency.

The only address the Applicant has provided for service is for the Department of Sociology at Memorial University, Newfoundland. Should the Applicant provide an alternative address in Canada or abroad where documents may be sent via ordinary mail, registered mail or courier, the Respondent would not be opposed to providing that manner of service. Similarly, the Respondent would not be opposed to providing service electronically, via email. To date, the Respondent has not been provided with a mailing address, email address or phone number outside Canada where the Applicant can be reached for service, or to otherwise confer on the proceedings.

As to the advancement of this case, and even though the applicant is outside the country, the parties on a joint basis as possible shall submit to the Court on or before June 29, 2010 a draft order which shall contain a practical and reasonable schedule with respect to the different steps that still need to be completed in order to perfect the case.

[12] The Applicant alleges that, despite the fact that he provided a mailing address, an email address and phone number outside Canada in his motion to be served outside Canada and to be heard by means of electronic communication, the Privacy Commissioner of Canada and the Minister of Justice and Attorney General of Canada never made any attempt to reach him through those addresses and that he was not properly served with the documents.

[13] First, I wish to note that, according to Rule 138 of the *Federal Court Rules*, a document that is not an originating document need not be served personally. Second, while I acknowledge that the Applicant did provide a postal address for a portion of his stay outside Canada and an email address for the duration of his stay abroad, those addresses were not “addresses for service” within the meaning of Rule 2 of the *Federal Court Rules*, which must be read with Rule 66(2)(c), defines “address for service” as “ the address shown on the last document filed by the party that indicates an address in Canada” [emphasis added]. The address in Moscow and the email address

provided by the Applicant were not addresses in Canada and therefore cannot be considered as valid addresses for service. I therefore conclude that the Applicant was validly served at the address that he had provided in his application for judicial review and I see no reviewable error in Prothonotary Morneau's order.

[14] I wish to add that, on July 6, 2010, Prothonotary Morneau issued an order in which he provided directions as to the electronic service of court documents and ordered that the parties submit to the Court by July 28, 2010 a draft order "which shall contain a practical and reasonable schedule with respect to the different steps that still need to be completed in order to perfect this case."

[15] This latest order issued by Prothonotary Morneau should resolve any difficulties with regard to communication and service of Court documents and should allow the parties herein to proceed diligently.

[16] I understand that the Applicant has now filed an appeal from that order, but the order dated July 6 2010 will stand and remain binding on the parties until a decision has been rendered in that appeal.

b) Order removing the Minister of Justice and Attorney General as Respondent

[17] The Applicant contends that by removing the Minister of Justice and Attorney General as Respondent, the Prothonotary made an error and ignored Rule 304(b)(iii) of the *Federal Court Rules*, which requires that the Attorney General of Canada be served with respect to an application for judicial review.

[18] While it is true that the Attorney General of Canada must be so served in accordance with that provision, which does not mean that the Attorney General of Canada must be named as a Respondent. Rule 303 provides as follows: “every person directly affected by the order sought in the application other than a tribunal in respect of which the application is brought” should be named as Respondent. Prothonotary Morneau considered that the Minister of Justice and the Attorney General of Canada did not represent the Privacy Commissioner of Canada, had no legal interest in the application for judicial review and mandamus and therefore and would not be affected by the outcome of the case; therefore, he ordered that he be removed as respondent. I am of the view that there is no error in Prothonotary Morneau’s order.

ORDER

THIS COURT DECIDES AS FOLLOWS:

The appeal is dismissed.

“Marie-Josée Bédard”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-555-10

STYLE OF CAUSE: ANTON OLEYNIK v. THE PRIVACY
COMMISSIONER OF CANADA, MINISTER OF
JUSTICE AND ATTORNEY GENERAL OF CANADA

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO
RULE 369**

**REASONS FOR ORDER
AND ORDER: :** JUSTICE BÉDARD

DATED: July 16, 2010

WRITTEN REPRESENTATIONS BY:

Anton Oleynik FOR THE APPLICANT

Louisa Garib FOR THE RESPONDENT –PRIVACY
COMMISSIONER OF CANADA

Nicole Arseneault FOR THE RESPONDENT- ATTORNEY
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