

Federal Court



Cour fédérale

Date: 20101210

Docket: T-555-10

Citation: 2010 FC 1248

Ottawa, Ontario, this 10th day of December 2010

Present: The Honourable Mr. Justice Pinard

BETWEEN:

ANTON OLEINIK

Applicant

and

**THE PRIVACY COMMISSIONER
OF CANADA**

Respondent

Upon a motion in writing by the applicant, pursuant to Rules 51(1) and 369 of the *Federal Courts Rules*, for an order quashing the Order made by Prothonotary Richard Morneau on November 18, 2010;

REASONS FOR ORDER AND ORDER

[1] On October 8, 2010, the applicant served the affiant Joyce McLean, Manager of Investigations with the Office of the Privacy Commissioner of Canada, with a list of 14 questions pursuant to Rule 99 of the *Federal Courts Rules*, SOR/98-106 (the “Rules”).

[2] On October 21, 2010, the respondent brought a motion to strike each of the applicant's 14 questions on the grounds that they are:

- i. irrelevant;
- ii. beyond the proper scope of examination;
- iii. beyond the scope of examination for judicial review proceedings for which the affidavit for the respondent was filed; and
- iv. represent an improper attempt to circumvent the Privacy Commissioner's objection to producing materials in her possession filed pursuant to Rule 318(2) of the *Federal Courts Rules*.

[3] Prothonotary Richard Morneau granted the respondent's motion in his Order of November 18, 2010 striking out each of the applicant's 14 written interrogatories, and dismissing the applicant's requested relief in the form of an extension or "updating" of the relevant timelines.

[4] Upon reading the parties' written submissions and upon considering the relevant material filed, the motion is dismissed for the following reasons:

[5] The Prothonotary did not commit a reviewable error, nor are the questions raised in the motion vital to the final issue of the case (see *Merck & Co., Inc. v. Apotex Inc.*, [2004] 2 F.C.R. 459 (F.C.A.), at paragraph 19).

[6] On the matter that was properly before him, the Prothonotary's decision to strike out each and every one of the applicant's 14 written interrogatories was entirely reasonable and proper, based on the record before him. The applicant took two opportunities to address any alleged misrepresentations and to counter the respondent's arguments with respect to the lack of relevance

and propriety of the written questions before the Prothonotary rendered any decision. The Prothonotary did not misapprehend the facts on the record, nor was he “misled” by the respondent.

[7] Even if the questions raised in the motion were considered to be vital to the final issue of the case, I would evaluate the evidence before me and conclude in the same manner as the Prothonotary did.

[8] Consequently, the motion is dismissed, with costs.

ORDER

The motion is dismissed, with costs.

“Yvon Pinard”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-555-10

STYLE OF CAUSE: ANTON OLEINIK v. THE PRIVACY
COMMISSIONER OF CANADA

**MOTION DEALT WITH IN WRITING PURSUANT TO RULE 369 OF THE
*FEDERAL COURTS RULES***

**REASONS FOR ORDER
AND ORDER:** Pinard J.

DATED: December 10, 2010

SOLICITORS OF RECORD:

Anton Oleinik
Moscow, Russian Federation

THE APPLICANT ON HIS OWN BEHALF

Louisa Garib
Office of the Privacy Commissioner
of Canada
Ottawa, Ontario

FOR THE RESPONDENT