

Federal Court



Cour fédérale

**Date: 20110318**

**Docket: T-555-10**

**Citation: 2011 FC 335**

**Ottawa, Ontario, March 18, 2011**

**PRESENT: The Honourable Mr. Justice Scott**

**BETWEEN:**

**ANTON OLEINIK**

**Applicant**

**and**

**THE PRIVACY COMMISSIONER OF  
CANADA**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] This is an appeal from an Order issued by Prothonotary Richard Morneau on February 18, 2011.

[2] In the Order being appealed, Prothonotary Morneau denied the Applicant's motion to remove from the Court's file the solicitor's certificate of service, which has been filed by the Respondent, the Office of the Privacy Commissioner of Canada (OPC) on December 17, 2010.

[3] The underlying proceeding is an application for judicial review of two decisions rendered by the Privacy Commissioner of Canada in response to complaints filed by the Applicant against the Social Sciences and Humanities Research Council of Canada.

[4] On April 12, 2010, the Applicant also served a motion for :

- a. Personal service outside Canada;
- b. Hearing by means of electronic communication;
- c. Alternatively, a stay of proceedings until applicant's return;

[5] Of interest for this present appeal is the Order that was issued by Prothonotary Morneau on July 6, 2010 in which he provided directions as to the electronic service of Court documents.

[6] That July 6, 2010, Order was subsequently appealed by the Applicant on July 14, 2010. Justice Martineau dismissed that appeal by Order dated September 16, 2010.

[7] The Applicant is alleging that the Respondent failed to properly serve his record to the Applicant within the time allowed and that Prothonotary Morneau erred and unduly exercised his discretion upon a wrong principle in law and a misapprehension of facts when he validated the service of the Record by means of electronic communication on December 16, 2010 and again on December 29, 2010 and in the Order of February 18, 2011 which is the subject of this Appeal.

[8] Having carefully read the Applicant's submission and the motion record, I come to the conclusion that the appeal must fail for the following reasons: As stated on numerous occasions by this Court a discretionary Order of a Prothonotary should only be reviewed *de novo* or set aside if the questions raised in that motion are vital to the final determination of the case or if it is clearly in error, that it is based on a misapprehension of the facts or a wrong principle of law. (see *Merck & Co. Inc. v Apotex Inc.* 2003 FCA 488).

[9] The questions raised in this appeal are not vital, and after reading attentively the Order of February 18, 2011, I did not find any reviewable error. The documents were properly served in accordance to the instructions given in the July 6, 2010 Order.

**ORDER**

**THIS COURT ORDERS** that the appeal filed by the Applicant on March 1, 2011 be dismissed with costs.

"André F.J. Scott"

---

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-555-10

**STYLE OF CAUSE:** Anton Oleinik  
And The Privacy Commissioner of Canada

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

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

**DATED:** March 18, 2011

**WRITTEN REPRESENTATIONS BY:**

Anton Oleinik	FOR THE APPLICANT
Louisa Garib	FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Anton Oleinik Department of Sociology, Memorial University of Newfoundland Newfoundland and Labrador A1C 5S7	FOR THE APPLICANT (Self represented)
Legal Services, Policy and Parliamentary Affairs Branch Office of the Privacy Commissioner of Canada Ottawa (Ontario) K1A 1H3	FOR THE RESPONDENT