Federal Court Cour fédérale

Date: 20130830

Dockets: T-2115-11
T-2116-11
T-2117-11
T-2118-11

Citation: 2013 FC 919

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, August 30, 2013

PRESENT: The Honourable Mr. Justice Scott

Docket: T-2115-11

BETWEEN:

GISELLA PALMERINO

Applicant

and

MINISTER OF NATIONAL REVENUE

Respondent

Docket: T-2116-11

AND BETWEEN:

RODOLFO PALMERINO

Applicant

and

MINISTER OF NATIONAL REVENUE

Respondent

Docket: T-2117-11

AND BETWEEN:

ALFREDO MAGALHAES

Applicant

and

MINISTER OF NATIONAL REVENUE

Respondent

Docket: T-2118-11

AND BETWEEN:

FRANCESCO BRUNO

Applicant

and

MINISTER OF NATIONAL REVENUE

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] Pursuant to section 41 of the *Privacy Act*, RSC 1985, c P-21 [PA], this is an application by Gisella Palmerino (the applicant) for judicial review of a decision by the Canada Revenue Agency

[CRA] to refuse disclosure of all information concerning her – said information emanating from or received and/or held by 137 employees or officers of the CRA covering the period from January 2004 to May 2010.

[2] For the following reasons, this application for judicial review is allowed.

II. The facts

[3] On April 26, 2010, and May 7 and 10, 2010, the applicant filed requests with the CRA under the PA.

[4] The applicant sought to obtain, among other things, copies of all:

> [TRANSLATION]
> (a) … internal and external correspondence;
>
> (b) internal reports including all drafts;
>
> (c) personal agendas;
>
> (d) information;
>
> (e) memos and personal notes, both handwritten and electronic;
>
> (f) e-mails written, sent or received via the CRA's electronic address;
>
> (g) electronic, video or audio recordings (if there are any).

[5] The CRA responded on July 14, 2010, refusing to release the said information under paragraphs 16(1)(*a*) and 16(1)(*c*) of the *Access to Information Act*, RSC 1985, c A-1 [ATIA], since the information had apparently been prepared and obtained in connection with an investigation.

[6] The applicant then filed a complaint with the Office of the Privacy Commissioner (the Office) dealing with the handling of her request for personal information.

[7] On November 16, 2011, Arthur Dunfee, Director General of the Office, dismissed the applicant's complaint as without merit. Mr. Dunfee indicated that the CRA had informed him that its refusal was based on paragraphs 22(1)(*a*) and 22(1)(*b*) of the PA rather than paragraphs 16(1)(*a*) and 16(1)(*c*) of the ATIA. Consequently, the Office assessed the merits of the CRA's refusal to provide access to the requested information under paragraphs 22(1)(*a*) and 22(1)(*b*) of the PA.

[8] On December 29, 2011, the applicant filed this application for judicial review.

III. Legislation

[9] The statutory provisions applicable to the case at bar can be found in the appendix to this judgment.

IV. Issues and Standard of Review

A. Issues

1. ***Was the CRA justified in denying access to the requested documents under the terms of paragraphs 22(1)(a) and 22(1)(b) of the PA?***
2. ***If so, did the CRA err in exercising the discretionary authority conferred on it by subsection 22(1) of the PA to refuse to disclose the personal information requested by the applicant?***

B. Standard of Review

[10] In paragraph 15 of *Barta v Canada (Attorney General)*, 2006 FC 1152 [*Barta*], Justice Gibson finds that the standard of review applicable to the first issue cited is that of correctness, while for the second issue, it is reasonableness. Here is what Justice Gibson has to say:

> [15] On the facts of this matter, in addition to subparagraph 22(1)(a)(i) of the *Act*, paragraph 22(1)(b) and sections 26 and 27 of the *Act* have been relied on as bases for exemption. Each of those provisions, like subparagraph 22(1)(a)(i), provides for discretion as to whether or not the exemption should be applied. Thus, then, I am satisfied that in reviewing exemptions under those provisions, as with a review of exemptions under subparagraph 22(1)(a)(i), the appropriate standard of review on whether the requested information falls within the category of exemption is correctness and, as to the exercise of discretion whether or not to release the information assuming it falls within the category of exemption is reasonableness *simpliciter*.

[11] Justice O'Keefe arrived at the same conclusions in *Thurlow v Canada (Royal Canadian Mounted Police)*, 2003 FC 1414 [*Thurlow*], at paragraphs 34 and 39 (see also *Blank v Canada (Justice)*, 2009 FC 1221, at paragraph 29 and *Leahy v Canada (Minister of Citizenship and Immigration)*, 2012 FCA 227 [*Leahy*], at paragraphs 96 to 99).

[12] In paragraph 57 of *Dunsmuir v New Brunswick*, 2008 SCC 9, the Supreme Court states the following:

> [57] An exhaustive review is not required in every case to determine the proper standard of review. Here again, existing jurisprudence may be helpful in identifying some of the questions that generally fall to be determined according to the correctness standard (*Cartaway Resources Corp. (Re)*, [2004] 1 S.C.R. 672, 2004 SCC 26). This simply means that the analysis required is already deemed to have been performed and need not be repeated.

[13] Since case law has satisfactorily established the standards of review applicable to both issues at hand, the Court will therefore apply the standard of correctness for the first issue and reasonableness for the second.

V. Positions of the parties

A. Applicant's position

[14] The applicant submits that the CRA's decision to deny her requests for personal information based on paragraph 22(1)(*a*) of the PA is unreasonable since these requests were for periods prior to April 7, 2008, in other words, before the official start of the investigation for tax fraud. The applicant, subjected to a third CRA audit covering fiscal years 2004 and 2005, submits that she is

entitled to access the documents and notes taken by the auditors. Thus, she maintains that the respondent may not argue that the [TRANSLATION] "documents sought … are, in almost every case, documents obtained and prepared as part of the investigation for tax fraud … since Spring 2008" (respondent's record, page 2).

[15] Counsel for the applicant has drawn the Court's attention to Schedule III of the *Privacy Regulations,* SOR/83-508, which lists the investigating bodies that can invoke the exemption in paragraph 22(1)(*a*). He points out that only investigations conducted by the Special Investigations Directorate, Department of National Revenue (which has since become the Canada Revenue Agency) qualify for this exemption. Counsel further argues that the investigation must be lawful, which he claims is not the case here, since the respondent's officers allegedly proceeded via information obtained as part of the audit, which does not fall under paragraph 22(1)(*a*) of the PA. He refers the Court to the document introduced as R-20, consisting of the notes from a meeting held May 9, 2007, where the respondent's officer, Marc Proulx, makes it clear to the applicant's accountant that he is conducting a routine audit.

[16] In addition, the applicant states that the requested information will make it possible to judge the legality of the actions taken by the CRA regarding the handling of her tax files as well as the search warrant executed against her.

[17] The applicant adds that she has reasons to believe that the CRA conducted disguised tax audits of BT Céramiques inc., Francesco Bruno, Alfredo Magalhaes, Rodolfo Palmerino and herself, in violation of the principles set out by the Supreme Court in *R v Jarvis*, 2002 SCC 73. She

would like access to documents that will enable her to confirm her statements and exercise her rights enshrined in the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, constituting Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [Charter].

[18] The applicant also recalled that the Court of Quebec judge acquitted, via a directed verdict, Alfredo Magalhaes and Rodolfo Palmerino, in their criminal case No. 500-73-003418-106, a decision that was upheld on appeal by Justice St-Gelais of the Superior Court (Docket No. 500-36-005835-114). The criminal case against applicants Gisella Palmerino and Francesco Bruno also came to an end.

[19] The applicant submits that the CRA's investigations for tax fraud have been closed for several months. Accordingly, the respondent cannot argue that the information for disclosure might interfere with an investigation. She argues that the exemption under subparagraph 22(1)(*b*)(i) cannot be applied in the case at bar.

[20] The applicant adds that she is not seeking to obtain information that could be used to identify police informants, and that she consents to this information being redacted before the requested documents are given to her.

[21] Lastly, the applicant states that, solely for the purposes of the present application for judicial review, she is not seeking to obtain copies of the documents seized at her residence\ and at that of third parties. According to her, waiving access to these two sets of documents would eliminate 90%

of the documents identified by the respondent; originally, 812 boxes and electronic files containing some 1,623,000 pages were sought.

[22] The applicant points out that Ms. Landreville's affidavit shows that the evidence considered was insufficient, since Ms. Landreville mentions [TRANSLATION] "almost all of the documents," which suggests that certain documents apparently were not obtained as part of the investigation for fraud. Further, counsel for the applicant alleges that Ms. Juneau's affidavit offers no details whatsoever on how Mr. Vallée went about his sampling. It is therefore argued that the evidence to support the intelligibility and merits of the decision to apply the exemption under paragraph 22(1)(*a*) is deficient.

B. Respondent's position

[23] Relying on the affidavit filed by Valérie Landreville, investigator with the Enforcement and Disclosures Directorate of the CRA, the respondent submits that the documents sought by the applicant, in her access requests, were obtained or prepared as part of tax fraud investigations launched on April 7, 2008, and that as a result, they come under the exemption under paragraph 22(1)(*a*) of the PA.

[24] In response to the applicant's argument that paragraph 22(1)(*b*) of the PA can no longer be applied because the investigations are closed, the respondent states that at the time the CRA rendered the decision contested in this application, i.e. on July 14, 2010, the investigation was still underway and paragraph 22(1)(*b*) applied.

[25] At the hearing, counsel for the respondent argued that even the documents prepared and obtained as part of a routine audit become subject to the exemption under paragraph 22(1)(*a*) once they are placed in the fraud investigation file.

[26] Moreover, the respondent argues that the Court must not take account of the context in *Jarvis*, above. According to him, in an application for judicial review of the decision to apply the exemption under paragraph 22(1)(*a*), the Court must disregard the reasons that led the applicant to file her request for information under the terms of the PA. The Court must confine itself to judging the decision to deny access to the requested documents.

VI. Analysis

[27] Both parties readily acknowledge that under paragraph 22(1)(*a*) of the PA, the CRA was entitled to refuse to disclose to the applicant all the documents obtained or prepared by the Agency after April 7, 2008, which is when the tax fraud investigation commenced.

[28] However, the applicant disputes the CRA's refusal to disclose documents obtained or prepared between January 2004 and April 7, 2008. To the extent that documents were drafted and compiled between these dates, it is up to the Court to determine whether, as at July 14, 2010 (the disclosure refusal date), the CRA had valid reasons to believe that their disclosure might very well undermine the investigation that remained open at the time.

[29] If that was the case, did the CRA have the right to refuse to disclose the documents sought under paragraph 22(1)(*b*) of the PA?

[30] In *Lavigne v Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53 [*Lavigne*], the Supreme Court addressed the quality of the reasons that could justify non-disclosure of personal information:

> 58 The non-disclosure of personal information provided in s. 22(1)(*b*) is authorized only where disclosure "could reasonably be expected" to be injurious to investigations. As Richard J. said in *Canada (Information Commissioner) v. Canada (Immigration and Refugee Board)*, *supra*, at para. 43, "[t]he reasonable expectation of probable harm implies a confident belief". There must be a clear and direct connection between the disclosure of specific information and the injury that is alleged. The sole objective of non-disclosure must not be to facilitate the work of the body in question; there must be professional experience that justifies non-disclosure. Confidentiality of personal information must only be protected where justified by the facts and its purpose must be to enhance compliance with the law.
> ….

[31] The applicant's argument that the exemption under paragraph 22(1)(*b*) of the PA does not apply, because the CRA's tax fraud investigations are now closed, has no basis and must therefore be rejected. The CRA's decision of July 14, 2010, is the subject of this application for judicial review. The investigations were still underway as of that date.

[32] Section 47 of the PA is clear: the burden of establishing that the head of a government institution is authorized to refuse to disclose personal information shall be on the government institution concerned. If the respondent cannot demonstrate that there are reasonable grounds for refusal, this Court may, under sections 48 and 49 of the PA, order that the documents sought be disclosed to the applicant.

[33] In the case at bar, the respondent has introduced an affidavit filed by Valérie Landreville, investigator with the Enforcement and Disclosures Directorate of the CRA, in which she indicated that almost all of the documents sought by the applicant were obtained and prepared as part of the investigation and therefore come under the exemption under paragraph 22(1)(*a*) of the PA.

[34] The respondent has also submitted an affidavit filed by Marie-Claude Juneau, Director, Access to Information and Privacy Directorate of the CRA. In it, the latter indicates that the information requests submitted by the applicant were assigned to Gilles Vallée, a senior analyst experienced in access to information and privacy [ATIP] in Montréal.

[35] In June 2010, Mr. Vallée went to the Montréal Tax Services Office to consult the documents. After discussions with the managers of the CRA's Enforcement and Disclosures Directorate, he was provided with a written recommendation from them to protect all of the documents, because (1) the documents were obtained and/or prepared by an investigative body, for an investigation that led to the laying of criminal charges; and (2) disclosure could prejudice an ongoing investigation.

[36] Given the volume of documents and the investigations underway, Mr. Vallée apparently proceeded with a sampling that he considered relevant to the requests, in order to confirm the validity of the recommendations made to him. He found that it would be reasonable to accept the recommendation to protect all of the documents. This is what is reported in Ms. Juneau's affidavit.

[37] If the respondent is right and all the requested documents were obtained and compiled by the CRA as part of their investigation, the debate is closed and the application for judicial review must be dismissed. However, if the CRA is refusing to disclose documents that it obtained before the start of the investigation, the Court must determine whether the exercise of this discretionary authority is justified.

[38] The affidavits filed by Valérie Landreville and Marie-Claude Juneau do not reasonably allow us to conclude that disclosing the documents would have likely risked undermining the investigation by the CRA.

[39] The respondent is not invoking any other specific fact to establish the existence of a likely risk of prejudicing the investigation. As the Supreme Court tells us in *Lavigne:*

> 61 There are cases in which disclosure of the personal information requested could reasonably be expected to be injurious to the conduct of investigations, and consequently the information could be kept private. There must nevertheless be evidence from which this can reasonably be concluded.

[40] In the case at bar, the respondent's decision, in response to the many requests filed by the applicant, is based solely on paragraphs 16(1)(*a*) and 16(1)(*c*) of the ATIA. This is clearly a mistake, since the respondent is referencing the ATIA rather than the PA.

[41] However, following the complaint filed by the applicant with the Office of the Privacy Commissioner, Arthur Dunfee, Director General, Complaints and Investigations, rectified the situation in paragraph 2 of his investigation summary when he clarified that the applicant's file was dealt with under paragraphs 22(1)(*a*) and 22(1)(*b*) of the PA. In light of paragraphs 16 to 18 of the

decision by the Supreme Court in *Newfoundland and Labrador Nurses' Union v Newfoundland-and-Labrador (Treasury Board)*, 2011 SCC 62, the Court is of the opinion that the reference to the wrong statute in the decision is not a fatal error in the circumstances.

[42] Mr. Dunfee then laid out the reasons that enabled him to dismiss the applicant's complaint. He stated the following:

> Section 22(1)(a) of the Act allows a government institution to withhold personal information if it was obtained or prepared by an investigative body during the course of a lawful investigation. Unlike other exempting provisions of the *Act*, this provision does not contain an injury test. In order to claim section 22(1) (a), the department need only demonstrate that the information at issue is less than 20 years old and that it was prepared or obtained in the course of a lawful investigation by an investigative body listed in Schedule III of the *Privacy* Regulations.
>
> In this case, the information exempted under the provision was prepared by CRA's Enforcement Division, formerly the Special Investigation Division, which is indeed an investigative body for the purpose of the *Act*, and all of the other requirements of this provision have been met as well. Therefore while CRA is not in itself an investigative body, it had the legal authority to invoke this exemption at the time it was claimed.

[43] In paragraphs 93 and 94 of its decision in *Leahy*, above, the Federal Court of Appeal sets out the role of a reviewing court in the area of access to information, namely to adjudicate disputes and ensure "appropriate government accountability, while at the same time protecting democratic values and effective governance."

[44] In paragraph 100 of its decision, the Court states the following in relation to the case in question:

> … As explained below, the evidentiary record before us is so thin that we cannot properly assess whether the decisions were correct or reasonable. Among other things, we cannot tell from the record who applied the exemptions to the documents, what definition of those exemptions was used, and what consideration was given to the exercise of discretion. Without that basic information, we cannot assess the correctness or the reasonableness of the decisions made. In short, this Court has been prevented from discharging its role on judicial review.

[45] Unfortunately, the Court finds itself in an analogous position in the case at bar. First of all, it must be said that Ms. Juneau's decision letter of July 14, 2010, offers no clarification, and even cites non-applicable provisions of the ATIA. The Court rejects this letter out of hand. Looking at Mr. Dunfee's decision, here again the terseness and lack of reasons strike us as unreasonable. Indeed, the applicant was given no clarification regarding the reasons her requests were denied, other than the fact that the CRA has investigative authority, which is mentioned in Schedule III, and that the requested information was compiled as part of an investigation.

[46] What test was applied to establish that the requested documents and reports were all produced as part of the investigation, including those documents predating April 7, 2008? No one knows.

[47] However, the affidavits filed by the respondent are illuminating, in that they enable the Court to find that the respondent erred in invoking paragraph 22(1)(*a*) and that the respondent's decision under paragraph 22(1)(*b*) is unreasonable, for the following reasons:

[48] First, the affiant Valérie Landreville claimed the following in paragraphs 5 and 6 of her affidavit:

> [TRANSLATION]
> 5. I know that the documents sought in the access to information requests submitted by the applicants are almost all documents obtained and prepared as part of tax fraud investigations into the applicants' affairs that the Canada Revenue Agency's Enforcement and Disclosures Directorate launched in the spring of 2008.
>
> 6. There is no doubt in my mind that almost all of the documents and information targeted in the access to information requests submitted by the applicants were obtained or prepared by the Canada Revenue Agency in accordance with the *Income Tax Act* with a view to combating tax fraud.

[49] Questioned about her affidavit, Ms. Landreville offered the following clarification:

> [TRANSLATION]
> I didn't have access to what was provided by all of these hundred and thirty-seven (137) applicants, so I can't say that I know about all of the documents. (See Examination, page 9, lines 5 to 8, applicant's record, page 142)

[50] Later, she adds [TRANSLATION] "so, the majority of them, I know that it's…..I can say that it's the majority of the documents, but there are definitely some I don't have access to, so I can't say anything about those ones." (see Examination, page 11, lines 9 to 14, applicant's record, page144)

[51] How, then, can the respondent maintain that all of the requested documents can come under the exemption in paragraph 22(1)(*a*)?

[52] Furthermore, the affidavit filed by Ms. Juneau does not enable the Court to confirm that the CRA handled the request on the basis of the investigation start date, since she indicates that Mr. Vallée proceeded via sampling, with no clarification.

[53] The evidence before the Court does not enable us to determine which documents produced by which employee and bearing which date were actually consulted to determine that the 1,623,000 come under the exemption. Also, documents R-1 to R-25 filed by the applicant establish that officers in the criminal investigations service, including Mr. Paquette, consulted the applicant's computer files well before the start of the fraud investigation. Under the circumstances, there is no choice but to conclude that this decision to deny access to the requested documents cannot be justified, at least for some of the documents.

[54] As Justice Rothstein recalls in *Kaiser v Minister of National Revenue*, [1995] FCJ No 926, at paragraph 2:

> … There is no doubt the onus is on the respondent to establish disclosure should not be made, The Court must be given an explanation of how or why the harm alleged might reasonably be expected to result from disclosure of the specific information. This is not a case where harm from disclosure is self-evident. . I have been asked to infer that harm will result if disclosure is allowed. In order to make such an inference, explanations provided by the Minister must clearly demonstrate a linkage between disclosure and the harm alleged so as to justify confidentiality.

[55] The Court must reject the interpretation proposed by the respondent, whereby the documents obtained in connection with a simple audit are automatically subject to the exemption in paragraph 22(1)(*a*) once they are placed in a fraud investigation file. Allowing this interpretation would harm the fundamental rights recognized by the Charter. The Supreme Court reminds us, and rightly so, of the quasi-constitutional nature of the PA in its decision in *Lavigne* above. Moreover, the respondent cites no authority to support this interpretation. What is more, Schedule III of the Regulations concerns criminal investigations and not routine audits under the *Income Tax Act*, RSC 1985, c. 1 (5th Supp).

[56] Nor can the Court subscribe to the respondent's argument that for judicial reviews of a decision made under paragraphs 22(1)(*a*) and 22(1)(*b*) of the PA, it cannot consider the applicant's aims. Just as it is incumbent upon the respondent to justify its refusal, so too can the context and events surrounding the gathering of the requested information become pivotal, in certain circumstances. In the case at bar, the applicant seeks to challenge the lawfulness of part of the investigation into her activities in order to protect her rights guaranteed under the Charter and as defined in *Jarvis* (cited earlier). This fact cannot be ignored by the Court, especially since the respondent is offering no clarification as to the nature of the harm it may incur.

[57] The evidence presented by the respondent to justify his refusal to provide access to the requested documents demonstrates that some of the documents may have been obtained outside the confines of the fraud investigation. Moreover, the tests and methodology employed to determine whether the requested documents were actually obtained and compiled as part of the fraud investigation and not during the audit are not clear. In the circumstances, the respondent's refusal is unreasonable, and the Court must allow the application for judicial review. The present decision is applicable *mutatis mutandis* to dockets T-2116-11, T-2117-11 and T-2118-11, and shall be placed in each of these dockets.

JUDGMENT

THE COURT ALLOWS this application for judicial review and **ORDERS** the respondent, pursuant to section 48 of the PA, to remit, within 120 days after this judgment, copies of all the documents in his possession, as requested by the applicant on April 22 and 26 and on May 3 and 7, 2010, that were compiled or produced prior to April 7, 2008, by officers of the CRA and that were placed in the respondent's investigation file, except for the documents seized at the applicant's and third parties' residence\s under a search warrant, and documents that would make it possible to identify police informants, which must be redacted.

Without costs.

"André F.J. Scott"

Judge

Certified true translation
Monica F. Chamberlain

APPENDIX

Privacy Act, RSC 1985, c P-21	*Loi sur la protection des renseignements personnels*, LRC 1985, c P-21
Right of access	**Droit d'accès**
12. (1) Subject to this Act, every individual who is a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act has a right to and shall, on request, be given access to	**12. (1) Sous réserve des autres dispositions de la présente loi, tout citoyen canadien et tout résident permanent au sens du paragraphe 2(1) de la Loi sur l'immigration et la protection des réfugiés ont le droit de se faire communiquer sur demande :**
(*a*) any personal information about the individual contained in a personal information bank; and	***a*) les renseignements personnels le concernant et versés dans un fichier de renseignements personnels;**
(*b*) any other personal information about the individual under the control of a government institution with respect to which the individual is able to provide sufficiently specific information on the location of the information as to render it reasonably retrievable by the government institution.	***b*) les autres renseignements personnels le concernant et relevant d'une institution fédérale, dans la mesure où il peut fournir sur leur localisation des indications suffisamment précises pour que l'institution fédérale puisse les retrouver sans problèmes sérieux.**
22. (1) The head of a government institution may refuse to disclose any personal information requested under subsection 12(1)	**22. (1) Le responsable d'une institution fédérale peut refuser la communication des renseignements personnels demandés en vertu du paragraphe 12(1) :**
(*a*) that was obtained or prepared by any government institution, or part of any government institution, that is an investigative body specified in the regulations in the course of lawful investigations pertaining to	***a*) soit qui remontent à moins de vingt ans lors de la demande et qui ont été obtenus ou préparés par une institution fédérale, ou par une subdivision d'une institution, qui constitue un organisme d'enquête déterminé par règlement, au cours d'enquêtes licites ayant trait :**
(i) the detection, prevention or suppression of crime,	**(i) à la détection, la prévention et la répression du crime,**
(ii) the enforcement of any law of Canada or a province, or	**(ii) aux activités destinées à faire respecter les lois fédérales ou provinciales,**
(iii) activities suspected of constituting	

threats to the security of Canada within the meaning of the Canadian Security Intelligence Service Act,

(iii) aux activités soupçonnées de constituer des menaces envers la sécurité du Canada au sens de la Loi sur le Service canadien du renseignement de sécurité;

if the information came into existence less than twenty years prior to the request;

(*b*) the disclosure of which could reasonably be expected to be injurious to the enforcement of any law of Canada or a province or the conduct of lawful investigations, including, without restricting the generality of the foregoing, any such information

***b*) soit dont la divulgation risquerait vraisemblablement de nuire aux activités destinées à faire respecter les lois fédérales ou provinciales ou au déroulement d'enquêtes licites, notamment :**

(i) relating to the existence or nature of a particular investigation,

(i) des renseignements relatifs à l'existence ou à la nature d'une enquête déterminée,

(ii) that would reveal the identity of a confidential source of information, or

(ii) des renseignements qui permettraient de remonter à une source de renseignements confidentielle,

(iii) that was obtained or prepared in the course of an investigation;

(iii) des renseignements obtenus ou préparés au cours d'une enquête;

Review by Federal Court where access refused

Révision par la Cour fédérale dans les cas de refus de communication

41. Any individual who has been refused access to personal information requested under subsection 12(1) may, if a complaint has been made to the Privacy Commissioner in respect of the refusal, apply to the Court for a review of the matter within forty-five days after the time the results of an investigation of the complaint by the Privacy Commissioner are reported to the complainant under subsection 35(2) or within such further time as the Court may, either before or after the expiration of those forty-five days, fix or allow.

41. L'individu qui s'est vu refuser communication de renseignements personnels demandés en vertu du paragraphe 12(1) et qui a déposé ou fait déposer une plainte à ce sujet devant le Commissaire à la protection de la vie privée peut, dans un délai de quarante-cinq jours suivant le compte rendu du Commissaire prévu au paragraphe 35(2), exercer un recours en révision de la décision de refus devant la Cour. La Cour peut, avant ou après l'expiration du délai, le proroger ou en autoriser la prorogation.

Burden of proof

47. In any proceedings before the Court arising from an application under section 41, 42 or 43, the burden of establishing that the head of a government institution is authorized to refuse to disclose personal information requested under subsection 12(1) or that a file should be included in a personal information bank designated as an exempt bank under section 18 shall be on the government institution concerned.

Order of Court where no authorization to refuse disclosure found

48. Where the head of a government institution refuses to disclose personal information requested under subsection 12(1) on the basis of a provision of this Act not referred to in section 49, the Court shall, if it determines that the head of the institution is not authorized under this Act to refuse to disclose the personal information, order the head of the institution to disclose the personal information, subject to such conditions as the Court deems appropriate, to the individual who requested access thereto, or shall make such other order as the Court deems appropriate.

Order of Court where reasonable grounds of injury not found

49. Where the head of a government institution refuses to disclose personal information requested under subsection 12(1) on the basis of section 20 or 21 or paragraph 22(1)(*b*) or (*c*) or 24(*a*), the Court shall, if it determines that the head of the institution did not have reasonable grounds on which to refuse to disclose the personal information, order the head of the institution to disclose the personal information, subject to such conditions as the Court deems appropriate, to the individual who requested access thereto, or

Charge de la preuve

47. Dans les procédures découlant des recours prévus aux articles 41, 42 ou 43, la charge d'établir le bien-fondé du refus de communication de renseignements personnels ou le bien-fondé du versement de certains dossiers dans un fichier inconsultable classé comme tel en vertu de l'article 18 incombe à l'institution fédérale concernée.

Ordonnance de la Cour dans les cas où le refus n'est pas autorisé

48. La Cour, dans les cas où elle conclut au bon droit de l'individu qui a exercé un recours en révision d'une décision de refus de communication de renseignements personnels fondée sur des dispositions de la présente loi autres que celles mentionnées à l'article 49, ordonne, aux conditions qu'elle juge indiquées, au responsable de l'institution fédérale dont relèvent les renseignements d'en donner communication à l'individu; la Cour rend une autre ordonnance si elle l'estime indiqué.

Ordonnance de la Cour dans les cas où le préjudice n'est pas démontré

49. Dans les cas où le refus de communication des renseignements personnels s'appuyait sur les articles 20 ou 21 ou sur les alinéas 22(1)*b*) ou *c*) ou 24*a*), la Cour, si elle conclut que le refus n'était pas fondé sur des motifs raisonnables, ordonne, aux conditions qu'elle juge indiquées, au responsable de l'institution fédérale dont relèvent les renseignements d'en donner communication à l'individu qui avait fait la demande; la Cour rend une autre ordonnance si elle l'estime indiqué.

shall make such other order as the Court deems appropriate.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	T-2115-11, T-2116-11, T-2117-11 AND T-2118-11
DOCKET:	T-2115-11
STYLE OF CAUSE:	GISELLA PALMERINO v MINISTER OF NATIONAL REVENUE
AND DOCKET:	T-2116-11
STYLE OF CAUSE:	RODOLFO PLAMERINO v MINISTER OF NATIONAL REVENUE
AND DOCKET:	T-2117-11
STYLE OF CAUSE:	ALFREDO MAGALHAES v MINISTER OF NATIONAL REVENUE
AND DOCKET:	T-2118-11
STYLE OF CAUSE:	FRANCESCO BRUNO v MINISTER OF NATIONAL REVENUE

PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	JUNE 10, 2013
REASONS FOR JUDGMENT BY:	SCOTT J.
DATED:	AUGUST 30, 2013

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