Federal Court  Cour fédérale

Date: 20130326

Docket: T-1801-10

Citation: 2013 FC 307

Ottawa, Ontario, March 26, 2013

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

BRITISH COLUMBIA LOTTERY CORPORATION

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

INTRODUCTION

[1] This is a motion brought under subsection 51(1) of the *Federal Courts Rules*, SOR/98-106 (*Federal Courts Rules*), appealing the motion of Prothonotary Milczynski dated 15 October 2012 granting the Appellant's motion for a confidentiality order under subsections 55(1) and 73.21(4) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000 c 17 (Act) and Rule 151 of the *Federal Courts Rules*.

BACKGROUND

[2] The British Columbia Lottery Corporation (BCLC) is a Crown corporation in British Columbia that is responsible for running and managing lottery, casino and gaming operations in the province. BCLC's governing statute is the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000 c 17 (Act). The Act sets out requirements for record keeping, client identification and reporting obligations with respect to financial transactions.

[3] The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) is an independent agency established under the Act that collects information to assist in the detection, prevention and deterrence of money laundering and financing of terrorist activities. Part of FINTRAC's role is to conduct compliance examinations and audits, with which it can compel regulated entities such as BCLC to comply. The audits are done to assist in determining compliance with the Act and to assist with law enforcement.

[4] FINTRAC completed a compliance report on BCLC on 30 October 2009 which required BCLC to produce certain documentation and records. On 29 January 2010, FINTRAC delivered an audit report to BCLC which identified certain deficiencies in BCLC's reporting requirements. BCLC responded, saying that it had addressed each category of violation. On 15 June 2010, FINTRAC issued a Notice of Violation alleging that BCLC was non-compliant with the Act as a result of the deficiencies identified in the audit.

[5] BCLC requested reconsideration on the Notice of Violation on 30 June 2010, and made further supplementary submissions on 3 August 2010. By decision dated 1 October 2010, the Director of FINTRAC affirmed the Notice of Violation and issued an Administrative Monetary

Penalty against BCLC for $695,750. The underlying proceeding is the appeal from BCLC from the decision of the Director of FINTRAC.

[6] Prior to this, media in British Colombia reported that FINTRAC had issued large monetary penalties against BCLC. Canadian Broadcasting Corporation/Radio Canada (CBC), filed requests with BCLC pursuant to the British Colombia *Freedom of Information and Protection of Privacy Act*, RSBC c 165, in order to obtain the following records (collectively, the Records):

a. Any notices of violation issued by FINTRAC against BCLC;

b. Any audit reports prepared by FINTRAC and delivered to BCLC;

c. Any reply materials prepared by BCLC and delivered to FINTRAC;

d. The decision issued by FINTRAC confirming the violation.

[7] BCLC refused to disclose any of this information to CBC. As a result, CBC requested an inquiry be conducted by the Office of the Information and Privacy Commissioner of British Columbia (BCOIPC). BCOIPC ordered the Records disclosed. BCLC filed a motion on 10 May 2012 to obtain a confidentiality order over the Records, which is the underlying motion in this appeal.

[8] On 15 October 2012, Prothonotary Milczynski determined that subsection 73.21(4) of the Act is "an express non-disclosure provision" that captures information described in subsection 55(1) of the Act. She determined that the Records contained "prescribed financial transaction information" and thus fell under subsection 55(1). She ordered that these documents be sealed. The Attorney General now seeks to appeal Prothonotary Milczynski's order that these documents be filed and maintained in accordance with Rule 152 of the *Federal Courts Rules*.

DECISION UNDER REVIEW

[9] The Decision that is being appealed is the order by Prothonotary Milczynski dated 15 October 2012 granting a motion brought by BCLC for a confidentiality order pursuant to subsection 73.21(4) of the Act and Rule 151 of the *Federal Courts Rules*, as well as an order maintaining the confidentiality of the hearing.

[10] Prothonotary Milczynski noted that the motion did not involve a constitutional challenge, and thus the issue before her was a matter of the application of the Act. She found that in the absence of a constitutional challenge, this was not a matter of applying the test found in *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41, or of reading down legislation so as to make the restriction conform as much as possible with the public interest in open court proceedings and/or the *Canadian Charter of Rights and Freedoms*. The Prothonotary found that the Act was clear as to what information must be kept sealed and confidential, both by FINTRAC and by the Court in the course of any appeal from the Director. Although some of the information falling under subsection 55(1) of the Act might not meet the test for confidentiality under Rule 151 of the *Federal Courts Rules*, the Prothonotary found that it is the Act that must govern.

[11] Prothonotary Milczynski noted that the scope of the order requested by BCLC was overly broad; it sought to maintain the confidentiality of every document and piece of information involved because of the practical difficulties of removing or redacting what falls under the Act from what does not. Prothonotary Milczynski noted that only in exceptional circumstances should the Court grant a confidentiality order, and thus only information referred to in the Act should be subject to a sealing order. To the extent there may be additional documents (falling outside subsection 55(1) of

the Act) that are sought to be protected as the appeal proceeds, the party seeking the protection will need to bring a further motion.

[12] Prothonotary Milczynski noted that determining what information falls within subsection 55(1) of the Act required some navigation around other provisions of the statute, but the information is clearly defined and extensive. BCLC argued that the Court should have regard to the purpose of the Act, policy considerations and the public interest in determining whether the information should be kept confidential. CBC argued that each document should be reviewed on a principled basis to ensure that only what satisfies the *Sierra Club* criteria is kept confidential. The CBC was concerned with the comprehensive and all encompassing nature of the order sought by BCLC, and noted that the open court principle and freedom of expression are fundamental aspects of the rights guaranteed by the Charter.

[13] The CBC submitted that the Court must look to the language of the statute to determine whether there is a clear intention on the part of Parliament to ban access to the proceeding and to the material filed. It also argued that FINTRAC's obligation of non-disclosure contained in paragraph 55(1)(*f*) of the Act only refers to Part 3 of the Act, and the documents sought by the CBC relate to the enforcement of Part 1 of the Act.

[14] Prothonotary Milczynski found that the CBC's submissions failed to take into account the clear and unambiguous language of subsection 55(1) of the Act. That section does not refer to particular documents, but to the information contained therein. The information sought to be protected in this proceeding is information relating to the manner in which BCLC records, monitors or otherwise deals with financial transactions in which money laundering and terrorist financing activities may be detected and reported. It is financial transaction information provided by BCLC to

FINTRAC pursuant to section 9 of the Act, and also relates to the information obtained in the administration and enforcement of Part 3 of the Act, and what was prepared by FINTRAC from information referred to in paragraph 55(1)(*b*) of the Act. Parliament's intention was to protect findings made by FINTRAC as well as the information related to how FINTRAC administers compliance within the Act.

[15] The Respondent, the Attorney General of Canada (AG), submitted that the order sought by BCLC was overbroad and inconsistent with the principles of an open court process, and that the order is not justified by subsection 55(1). The AG thought that subsection 73.21(4) of the Act does not impose a specific obligation on the Court to seal information, and that the Court retains discretion as to how to avoid disclosure of information. The AG submitted that the Court could permit disclosure of some documents captured by subsection 55(1) of the Act, following a review and analysis of those documents, by applying the *Sierra Club* test and finding that such documents did not warrant protection.

[16] Prothonotary Milczynski noted that in the absence of a constitutional challenge to the legislation, there was no basis for the Court to engage in the type of balancing exercise or analysis suggested by the AG. This can only be conducted for documents that fall outside the parameters of subsection 55(1). With respect to the Records that were of particular interest to the CBC, Prothonotary Milczynski found that these documents came squarely within the parameters of the Act. She further found that with respect to all other documents falling within subsection 73.21(4) of the Act, the requirement of non-disclosure is clear and unambiguous. She also noted that subsection 73.22, which prohibits any information relating to a proceeding under the Act from being disclosed

until the proceeding ends, "would make little sense… to be included in the Act, if through the proceedings in this Court, all of the information relating to the violation was already disclosed."

[17] Prothonotary Milczynski noted that the decision in *Canada (Information Commissioner) v Canada (Prime Minister)*, [1993] 1 FC 427 (TD), at paragraphs 89-92, is directly on point where, as in this case, there was an express derogation of a protected right:

> Counsel for Ms. Calamai says that he does not challenge the constitutionality of section 14. Indeed he says it is valid and there are occasions when a refusal to disclose would be justified. However, if section 14 expressly confers the power on the government to limit an assumed protected right (access to government information), the attack must be on the constitutional validity, applicability or operability of section 14. This requires compliance with section 57 of the Federal Court Act.
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> In an effort to get around section 57, counsel argues that section 14 must only be "construed" with a view to paragraph 2(b) of the Charter and that this is different than questioning the validity, applicability or operability of the section.
>
> While there may be circumstances where an argument relating to the construction of a statute does not involve the question of its validity, applicability or operability, I cannot appreciate such a distinction in this case based upon the arguments made. Counsel argues that the information in question here contributes to "core values" thereby creating a prima facie right of access and that in these circumstances the exemption in section 14 is narrowed by paragraph 2(b) of the Charter. This argument if accepted would, to my mind, result in the inapplicability or inoperability of the exemption under section 14 or at least the limiting or narrowing of the applicability or operability of the exemption when documents relating to core values are at issue. If it does not result in the limiting or narrowing of the applicability or operability of the exemption then "construing" section 14 in light of the Charter serves no useful purpose.
>
> With respect to the Charter arguments…
>
> > … in the absence of required notice, which may possibly lead to the hearing of additional submission, I will not adjudicate the Charter challenge in this case.

[18] In *Bell Express Vu Limited Partnership v Rex*, 2002 SCC 42, the Supreme Court of Canada stated at paragraph 66 that "where a statute is unambiguous, the court must give effect to the clearly expressed legislative intent and avoid using the Charter to achieve a different result." The Supreme Court of Canada noted at paragraph 62:

> Statutory enactments embody legislative will. They supplement, modify or supersede the common law. More pointedly, when a statute comes into play during judicial proceedings, the courts (absent any challenge on constitutional grounds) are charged with interpreting and applying it in accordance with the sovereign intent of the legislator. In this regard, although it is sometimes suggested that "it is appropriate for courts to prefer interpretations that tend to promote those [Charter] principles and values over interpretations that do not" (Sullivan, supra, at p. 325), it must be stressed that, to the extent this Court has recognized a "Charter values" interpretive principle, such principle can only receive application in circumstances of genuine ambiguity, i.e., where a statutory provision is subject to differing, but equally plausible, interpretations.

[19] Prothonotary Milczynski found that, absent a notice of constitutional question as required by section 57 of the *Federal Courts Act*, the confidentiality order must be granted for information falling within subsection 55(1) of the Act, even for designated information that might not otherwise have been so protected by application of Rule 151 of the *Federal Courts Rules* or *Sierra Club*. Considering the legislative context, Charter principles and the common law test for a sealing order are inapplicable.

[20] Prothonotary Milczynski thought that the matter of attendance of the public and/or media at the hearing was a matter best left to the judge hearing the merits of the appeal. The same consideration applied in respect of any further interlocutory proceedings leading up to the hearing of the appeal.

ISSUES

[21] The only issue in this appeal is whether Prothonotary Milczynski was clearly wrong to order that information and documents that fall within subsection 55(1) of the Act must be filed and maintained in accordance with Rule 152 of the *Federal Courts Rules*.

STANDARD OF REVIEW

[22] In *Merck & Co. v Apotex Inc.*, 2003 FCA 488, the Federal Court of Appeal said at paragraph 19:

> Discretionary orders of prothonotaries ought not be disturbed on appeal to a judge unless:
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> a) the questions raised in the motion are vital to the final issue of the case, or
>
> b) the orders are clearly wrong, in the sense that the exercise of discretion by the prothonotary was based upon a wrong principle or upon a misapprehension of the facts.

The Court said that it is only in circumstances where either of the above preconditions are satisfied that a judge ought to exercise her of his own discretion *de novo*.

[23] Further, in *Mushkegowuk Council v Canada (Attorney General)*, 2011 FCA 133, the Court of Appeal stated that the Court should be reluctant to interfere with a discretionary decision made on non-vital issues by prothonotaries in the course of case managing a matter.

STATUTORY PROVISIONS

[24] The following sections of the Act are relevant to this proceeding:

Disclosure by Centre prohibited

55. (1) Subject to subsection (3), sections 52, 55.1, 56.1 and 56.2, subsection 58(1) and sections 65 and 65.1 of this Act and to subsection 12(1) of the *Privacy Act*, the Centre shall not disclose the following:

(*a*) information set out in a report made under section 7;
(*a.1*) information set out in a report made under section 7.1;

(*b*) information set out in a report made under section 9;
(*b.1*) information set out in a report referred to in section 9.1;
(*b.2*) information provided under sections 11.12 to 11.3 except for identifying information referred to in subsection 54.1(3);

(*c*) information set out in a report made under subsection 12(1), whether or not it is completed, or section 20;

(*d*) information voluntarily provided to the Centre about suspicions of money laundering or of the financing of terrorist activities;

Interdiction: Centre

55. (1) Sous réserve du paragraphe (3), des articles 52, 55.1, 56.1 et 56.2, du paragraphe 58(1) et des articles 65 et 65.1 de la présente loi et du paragraphe 12(1) de la *Loi sur la protection des renseignements personnels*, il est interdit au Centre de communiquer les renseignements :

a) contenus dans une déclaration visée à l'article 7;
a.1) contenus dans une déclaration visée à l'article 7.1;

b) contenus dans une déclaration visée à l'article 9;
b.1) contenus dans une déclaration visée à l'article 9.1;
b.2) qui ont été fournis sous le régime des articles 11.12 à 11.3, à l'exclusion des renseignements identificateurs visés au paragraphe 54.1(3);

c) contenus dans une déclaration — complète ou non — visée au paragraphe 12(1) ou un rapport visé à l'article 20;

d) se rapportant à des soupçons de recyclage des produits de la criminalité ou de financement des activités terroristes qui lui sont

transmis volontairement;

(*e*) information prepared by the Centre from information referred to in paragraphs (*a*) to (*d*); or

e) préparés par le Centre à partir de renseignements visés aux alinéas *a*) à *d*);

(*f*) any other information, other than publicly available information, obtained in the administration or enforcement of this Part.

f) obtenus dans le cadre de l'administration et l'application de la présente partie, à l'exception de ceux qui sont accessibles au public.

[…]

[…]

Precautions against disclosure

Huis clos

73.21 (4) In an appeal, the Court shall take every reasonable precaution, including, when appropriate, conducting hearings in private, to avoid the disclosure by the Court or any person or entity of information referred to in subsection 55(1).

73.21 (4) À l'occasion d'un appel, la Cour fédérale prend toutes les précautions possibles, notamment en ordonnant le huis clos si elle le juge indiqué, pour éviter que ne soient communiqués de par son propre fait ou celui de quiconque des renseignements visés au paragraphe 55(1).

[…]

[…]

Publication

Publication

73.22 When proceedings in respect of a violation are ended, the Centre may make public the nature of the violation, the name of the person or entity that committed it, and the amount of the penalty imposed.

73.22 Au terme de la procédure en violation, le Centre peut rendre public la nature de la violation, le nom de son auteur et la pénalité imposée.

ARGUMENTS

The Attorney General (AG)

[25] The AG points out that the Act sets out many safeguards on the use, retention, and disclosure of the information FINTRAC receives or collects in the course of carrying out its mandate. These include:

- FINTRAC must act at an arm's length from law enforcement agencies and others to which it is authorized to disclose information (s. 40(a));

- FINTRAC may only use listed sources of information in conducting its analysis (s. 54);

- FINTRAC may only disclose information to a limited number of prescribed disclosure recipients (ss. 55(3), 55.1, 56.1);

- FINTRAC may only disclose prescribed factual information received or collected to those disclosure recipients (ss. 55(7), 55.1(3), 56.1(5));

- FINTRAC may only disclose non-compliance information obtained in the course of the administration or enforcement of Part 1 of the Act to appropriate law enforcement agencies (s. 65);

- FINTRAC may only make disclosures after reaching the appropriate prescribed threshold;

- FINTRAC is subject to review by the Office of the Privacy Commissioner with respect to the measures it has taken to protect the information it has received or collected pursuant to the Act (s. 72(2)); and

- FINTRAC has a general immunity from compulsory processes, subject to specific exceptions.

[26] Notwithstanding these safeguards, the Act provides for a number of instances in which prescribed information may or must be disclosed. FINTRAC must disclose certain factual information in the context of certain investigations or prosecutions. Also, the general prohibition in section 55 only applies to FINTRAC, its employees and its contractors.

[27] The AG submits that the Prothonotary erred in law in holding that the Act requires the Court to grant a sealing order to prohibit disclosure of all information referred to in section 55 during the course of an appeal. The AG says that by enacting subsection 73.21(4), Parliament left it up to the Court to determine what measures, if any, should be taken to protect information in the course of an appeal.

Permissive, not mandatory, language

[28] The AG says that Parliament's choice of language in enacting subsection 73.21(4) of the Act demonstrates its intention to preserve this Court's discretion in deciding how best to avoid the disclosure of personal and sensitive information during the course of an appeal. No amendment or constitutional challenge to the Act is necessary to ensure that this Court retains the discretion to

fashion the appropriate remedy under the circumstances. The current language of the Act clearly gives the Court that discretion.

[29] While this Court is required to take "every reasonable precaution" to safeguard information referred to in subsection 55(1), the means by which it fulfills that obligations are not specified. In interpreting the meaning of subsection 73.21(4), the Court must read the legislator's deliberate choice of words in the context of the statute as a whole (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 at paragraph 21).

[30] In addition to the language of the Act itself, the AG argues that the jurisprudence supports the proposition that this Court retains the discretion to determine how best to avoid disclosure of the prescribed information. In *Ruby v Canada (Solicitor General)*, 2002 SCC 75, the Supreme Court of Canada held that near-identical language in the *Privacy Act* gives a judge presiding over a judicial review application the discretion to decide how to protect sensitive information. The Supreme Court of Canada contrasted the phrase "the Court shall take every reasonable precaution, including, when appropriate, receiving representations *ex parte* and conducting hearings *in camera*," with mandatory language in section 51 of that statute ("shall") which requires that certain proceedings be heard *ex parte* and *in camera*.

[31] The AG submits that the Federal Court of Appeal came to the same conclusion in *Hunter v Canada (Consumer and Corporate Affairs)*, [1991] 3 FC 186 (CA). In considering identical provisions in the *Access to Information Act*, RSC, 1985, c A-1 (AIA), the Court of Appeal held that the section in question imposes on the Court "the absolute duty to take the necessary precautions to avoid the disclosure. The only discretion that section 47 gives the Court relates to the choice of the means to avoid the disclosure." The Court also said at paragraph 13 of *Hunter* that it was clear why

Parliament had granted the Court such discretion, as *ex parte* or *in camera* proceedings would not necessarily be required in every case. In concurring reasons, Justice Robert Décary held that the contrast between the mandatory language in other parts of the AIA and the more flexible, permissive language in section 47 was indicative of Parliament's intention to leave the means in the Court's discretion. He said at paragraph 36:

> Had Parliament intended to prevent any form of access by counsel during the judicial review, it would have been easy to say so in very few words. But why refer to "reasonable" precaution, why say "including", why add "when appropriate", why give two examples, i.e. ex parte representations and hearings in camera, if the purpose is to impose upon the Court the absolute duty, in all proceedings, whatever the record at issue, whatever the party, whatever the counsel, to ensure that the information will not be communicated to anyone? If Parliament had intended to give the Court no choice but to close the door on any form of communication pending the proceedings, wouldn't it have used in section 47 a language similar to that used in sections 35 and 52, or to that used in the *Canadian Security Intelligence Service Act* or in the *Immigration Act*?

[32] The AG points out that the Federal Court also recognized the judicial discretion granted by section 47 of AIA in *Steinhoff v Canada (Minister of Communications)*, (1996) 114 FTR 108 (TD) at paragraph 6 and *Blank v Canada (Minister of Justice)*, 2007 FCA 87.

[33] In the present case, a near-identical provision is at issue. While the duty imposed on this Court in subsection 73.21(4) of the Act to "take every reasonable precaution" is absolute, as noted in *Hunter*, the choice of means to avoid disclosure remains within the Court. Rules 151-152, and the associated jurisprudence, provide this Court with the appropriate mechanism to make that choice.

Rules 151-152 and the *Sierra Club* Test

[34] Confidentiality orders are an exception to the open court principle. Rule 151 of the *Federal Courts Rules* provides that the Court may order that material be filed confidentially where it is satisfied that the material should be treated as confidential, notwithstanding the public interest in open and accessible court proceedings. A confidentiality order is never automatic, even where the parties consent, because of the overarching public interest in open court proceedings (*Ishmela v Canada (Minister of Citizenship and Immigration)*, 2003 FC 838).

[35] The Supreme Court of Canada considered the circumstances in which a confidentiality order might be issued under Rule 151 in *Sierra Club*, above, at paragraph 53:

> A confidentiality order under Rule 151 should only be granted when:
>
> > (a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
> >
> > (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

[36] With regards to the first branch of the test, the risk in question must be real and substantial and grounded in the evidence. In considering whether reasonable alternative measures are available, the Court must not only consider other measures but also restrict the scope of the confidentiality order as much as possible (*Sierra Club*, paragraphs 54, 57). The party seeking the confidentiality order bears the burden of satisfying both branches of the test. The onus is a heavy one, and the case

must be clearly established on the evidence (*Abbott Laboratories Ltd. v Canada (Minister of Health)*, 2005 FC 989 at paragraph 68).

[37] While the *Federal Courts Rules* are informed by an underlying concern for efficiency and expeditiousness, this Court held in *Levi Strauss & Co. v Era Clothing Inc.*, (1999) 172 FTR 248 (TD) at paragraph 20 that such a policy

> …ought not to be at the expense of the even more important principle that, in a democratic society committed to the rule of law, limitations on the openness of the courts and the judicial process should be kept to the absolute minimum. When, in the context of the administration of justice, a clash between these values cannot be avoided, utilitarian considerations of expense and expedition should normally yield to the higher constitutional imperative.

Security Information is an Important Interest

[38] The AG agrees that the public disclosure of information relating to BCLC's security procedures presents a significant risk to an important interest within the meaning of the first branch of the *Sierra Club* test. Given the nature of the material and the potential consequences of its misuse, the AG agrees that its disclosure poses a serious potential harm to the public interest.

[39] However, under the second branch of the *Sierra Club* test, the Court must ensure that any confidentiality order is as narrow and focused as possible. In this regard, the order BCLC apparently seeks is overbroad. The AG submits that the following portions of the affidavit of Doug Morrison are properly confidential, on the basis that they make reference to BCLC's security policies and procedures:

a) Paragraphs 61-63, 65-66, 68-75, 78-79, 82-84, 143-144, 149-151, 155, 157-159, 166-169, 173, 189-192, and

b) Exhibits 13-18, 22-25, 28-29, 35-37, 42-27, 50-58, 78-82.

[40] The AG submits that the balance of the evidence in the Morrison affidavit should be open to the public.

BCLC

Basic Principles of Statutory Interpretation Affirm the Prothonotary's Order

[41] BCLC says that there is no challenge to the finding that the four documents at issue contain information that fall under subsection 55(1). Therefore, the only issue is the extent of the "discretion" afforded under subsection 73.21(4), which is an issue of statutory interpretation.

[42] BCLC says that the following exchange between Prothonotary Milczynski and counsel for the Attorney General that occurred during oral submissions on the motion clearly demonstrates the Attorney General's position:

> PROTHONOTARY MILCZYNSKI: Can I just ask, in your interpretation of 73.21(4) then, and the way it would operate in this appeal, there would be disclosure of some information that is captured by section 55?
>
> MR. BRUCKER: You know, it is possible if the Court felt it appropriate. And that is… where we get into the use of the word "reasonable"… The Court may be of the view that in the circumstances of requirement of an open trial, such information, which is may conceivably fall into some aspect of section 55, nevertheless ought to be disclosed.

[43] BCLC submits that subsection 73.21(4) is simply not written to allow the Court to, in its discretion, disclose information that falls within the ambit of subsection 55(1). Prothonotary Milczynski correctly dismissed this argument. BCLC states that basic principles of statutory interpretation, as well as the common law interpretations of similar provisions in other statutes, support this interpretation of subsection 73.21(4).

[44] The words of a statute are to be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme of the act, the object of the act, and the intention of Parliament (*Rizzo*, above). In having regard for the "entire context" of the subject statute, the Court must look at its place in relation to other acts (*R v Ulybel Enterprises Ltd.*, [2001] 2 SCR 867 at paragraphs 28-30). It is also a well established principle of statutory interpretation that the legislature does not intend to produce absurd consequences (*Rizzo*, paragraph 27).

[45] The grammatical and ordinary sense of subsection 73.21(4) is plain and obvious. The purpose of the section is to avoid disclosure of protected information, and the Court shall take "every" reasonable precaution to do so. There is no discretion for the Court to do anything other than ensure that prescribed information is not disclosed. BCLC says that this provision is a mandatory requirement of non-disclosure, and is "clear and unambiguous."

[46] BCLC says that the AG's position regarding the permissive language in subsection 73.21(4) and the nature of the discretion afforded in that section is incorrect. There is nothing permissive about what must be achieved pursuant to 73.21(4): information that falls within subsection 55(1) must not be disclosed. Subsection 73.21(4) imposes an obligation on the Court to take the measures necessary to ensure non-disclosure, and does not qualify the obligation, as the AG suggests, by

allowing the Court to take no measures. Indeed, it would be impossible to avoid disclosure of publicly filed documents if no measures were taken at all.

[47] BCLC submits that, at a minimum, subsection 73.21(4) requires that the Court avoid disclosure by sealing protected information. Absent this minimum threshold, the information filed in a proceeding that falls within subsection 55(1) will be publicly disclosed and the mandatory requirement of the statute would be frustrated.

[48] BCLC also says that it is of no assistance to the AG's position to point out that subsection 73.21(4) refers to "conducting hearings in private" as one possible precaution to avoid disclosure. While this does support a conclusion that the Court has discretion to take certain additional measures, this discretion does not derogate from the minimum measures that must be undertaken to avoid disclosure of prescribed information. Rather, the statute contemplates that greater precautions than a sealing order may be required in the circumstances to ensure non-disclosure.

[49] The discretion in subsection 73.21(4) arises once there has been a determination that subsection 55(1) information exists, and permits the Court to determine the most appropriate method to ensure that information is not disclosed. Prothonotary Milczynski correctly interpreted the nature of this discretion, holding that a sealing order over subsection 55(1) information is required, but that a decision as to whether to hold an *in camera* hearing is a matter of discretion.

[50] BCLC points out that the sealing provision in subsection 73.21(4) is immediately followed by subsection 73.22. Prothonotary Milczynski correctly determined that it would be an absurd result if subsection 73.21(4) were interpreted in a manner that rendered subsection 73.22 irrelevant by permitting disclosure by the Court when FINTRAC is prohibited from disclosing any protected

information at all until proceedings have ended. Further, even once the proceedings have ended, FINTRAC may only disclose and make public the nature of the violation, the name of the person who committed it and the amount of the penalty.

[51] BCLC argues that the interpretation proposed by the AG at paragraphs 23 and 24 of its memorandum would render subsection 73.22 inconsistent with subsection 73.21(4) and would also render subsection 73.22 meaningless. This is contrary to a basic principle of statutory interpretation that Parliament is intended to have meant what it said and has not made a mistake (*Heckendorn v Canada*, [2005] FCJ No 1006 (FC) at paragraph 18). As such, BCLC submits that such a result must be avoided.

The AG's Authorities Support the Prothonotary's Order

[52] BCLC submits that the authorities relied upon by the AG seeking to interpret the nature of the discretion in subsection 73.21(4) do not support the AG's argument. The AG relies on the cases of *Ruby* and *Hunter* for the proposition that the Court retains discretion to determine how best to avoid disclosure of prescribed information; BCLC submits that these authorities support Prothonotary Milczynski's Decision.

[53] The *Ruby* decision considered an express legislative non-disclosure provision. That case, however, was a constitutional challenge and the only issue for the Court was whether it could exercise its discretion under the *Privacy Act* to receive evidence *ex parte* or hold a hearing *in camera*, or whether doing so was mandatory. There was no question that the impugned information had to be protected; the only issue was whether the Court was required to employ a specific method to protect designated information by way of an *ex parte* or *in camera* hearing.

[54] The case of *Hunter* considered section 47 of the AIA and the duty to "take every reasonable precaution… to avoid disclosure by the Court." At paragraph 13 of that decision the Court says that "the Court has no discretion to order or authorize disclosure if it deems it necessary or useful; it has the absolute duty to take the necessary precautions to avoid the disclosure. The only discretion that section 47 gives to the Court relates to the choice of the means to avoid the disclosure."

[55] Therefore, BCLC submits that both *Ruby* and *Hunter* are consistent with Prothonotary Milczynski's order and her conclusion that the discretion contemplated by subsection 73.21(4) of the Act is a discretion to determine the method or measures by which the Court should protect against disclosure, while at the same time requiring that it do so. That is to say, the Court may seal documents, or hold the hearing *in camera* or even *ex parte*, depending on which method is reasonable in the circumstances; but there is no discretion to order or authorize disclosure of information that the Court is duty-bound to protect.

Analogous Legislation Confirms the Prothonotary's Order

[56] BCLC further submits that Prothonotary Milczynski's ruling is consistent with jurisprudence interpreting similar provisions in other provincial and federal legislation. Subsection 42(3) of Nova Scotia's *Freedom of Information and Protection of Privacy Act*, SNS 1993, c 5 (FIPPA) contains a nearly identical provision to subsection 73.21(4) of the Act. The Nova Scotia Court of Appeal has taken the statutory language at its plain meaning, ordering that documents must be sealed and that submissions be made *in camera* where provided for by FIPPA (*Coates v Capital District Health Authority*, [2012] NSJ No 24 (NSCA) [*Coates*]; *Shannex Health Care Management Inc v Nova Scotia (Attorney General)*, [2005] NSJ No 496 (NSCA) [*Shannex*].

[57] The AIA provides that, on an appeal under the AIA, the Federal Court must take efforts to maintain confidentiality over information and documents that the head of a government institution would be authorized to refuse to disclose. In *Blank*, above, the Federal Court of Appeal relied on this mandatory language to allow the Crown to make *in camera* and *ex parte* representations.

[58] The AIA regulates public access to records (including any documentary information) under the control of a federal government institution, as defined in the AIA. Under the AIA, FINTRAC is a federal government institution. Pursuant to subsection 24(1) of the AIA, FINTRAC must refuse to disclose any record that is subject to subsections 55(1)(a), (d) and (e) of the Act. This provision is consistent with the confidentiality requirements of the Act and specifically prohibits FINTRAC from disclosing information collected pursuant to the reporting obligations under the Act to the public.

[59] Subsection 42(3) of FIPPA, and the similar provision of the AIA, prescribe an even more restrictive approach to confidentiality than is contained in the Act, as they allow for *ex parte* submissions. However, the Courts have given effect to the plain language of these statutes, and have excluded both the public and parties to the action from being present during certain submissions, and from reviewing relevant records.

[60] The Act does not seek to seal documents from one of the parties to the proceeding. It does, however, indicate a clear intent by Parliament that a sealing order is required on the underlying appeal to prevent disclosure to the public of designated information. Just as with the AIA and FIPPA, the Act contains certain mandatory language requiring this Court to maintain confidentiality over designated information. In this case, such information forms the basis for the underlying appeal and, therefore, the necessary level of confidentiality can only be achieved by way of a sealing order.

While there is discretion in subsection 73.21(4), that discretion is in whether the Court should order an *in camera* hearing or other measure over and above a sealing order as a necessary measure to ensure that the prescribed information is not disclosed.

***Sierra Club* Does Not Apply**

[61] BCLC says that Prothonotary Milczynski was correct in not applying the test from *Sierra Club* and finding that, absent a constitutional challenge to subsection 73.21(4), "there is no basis for the Court to engage in this analysis or balancing exercise." In coming to this conclusion, she relied on the decisions in *Information Commissioner* and *Bell Express Vu*, above.

[62] There was no constitutional challenge in this case, and BCLC submits that the cases relied upon by Prothonotary Milczynski are directly on point. As the Decision says, "where a statute is unambiguous, courts must give effect to the clearly expressed legislative intent and avoid using the *Charter* to achieve a different result" (*Bell Express Vu* at paragraph 66). Statutory enactments embody legislative will, and the courts are charged with applying them in accordance with the sovereign intent of the legislator (*Bell Express Vu* at paragraph 62).

[63] BCLC submits that subsection 73.21(4) and section 73.22 of the Act express Parliament's mandatory directive that courts avoid disclosure of protected information. Once information is deemed to fall within the meaning of subsection 55(1), there is no discretion; its disclosure must be avoided. What the AG is asking this Court to do is to ignore clear statutory language and principles of statutory interpretation in order to give the Court a discretion to do something that it is strictly prohibited from doing; namely, disclosing information falling within subsection 55(1) of the Act.

[64] BCLC submits that Prothonotary Milczynski correctly considered the applicable law and interpreted the Act in a manner consistent with its clear, unambiguous language. As such, the Decision is correct.

CBC

[65] CBC submits that each of the four documents that form the Records ought to be considered separately to determine whether it should be subject to a confidentiality order. Although CBC has not seen the Reports, it suspects that many of the documents contain general information and not specifics.

[66] CBC submits that the open court principle is a fundamental part of the rule of law (*Canadian Broadcasting Corp. v Canada (Attorney General)*, 2011 SCC 2 [*CBC*]). Freedom of the press is an essential right in a democratic society, and the burden to restrict access lies with the party seeking to limit disclosure (*Dagenais v Canadian Broadcasting Corp.*, [1994] 3 SCR 835). It further submits that any legislation which restricts the freedom of expression of the media ought to be given a strict interpretation (*Morguard Properties Ltd. v Winnipeg (City)*, [1983] 2 SCR 493).

[67] BCLC does not state which of the documents it has filed are captured by the ban in subsection 55(1), and upon a reading of the sections of the Act that create the documents in the Report, CBC does not believe that the Report contains information that is meant to be captured by subsection 55(1). Is it Part 3 of the Act that is covered by subsection 55(1)(*f*), and the documents in question relate to the enforcement of Part 1.

[68] BCLC also argues that the documents in the Report are captured by the "catch-all" phrase referred to in paragraphs (*a*) to (*d*) of subsection 55(1); CBC submits that inferring these documents are to be included in a general provision rather than specifically referenced is not in keeping with the rules of statutory interpretation. Based on the assumption that Parliament intends consistency in statutes (*R. v Finta*, [1994] 1 SCR 701), if it was intended that the information contained in the Records be kept confidential Parliament would have specifically cited this information as it did for Part 3 of the Act. Furthermore, "Notice of Violation" is a term of art in the Act, and if Parliament intended it to be captured by the non-disclosure contained in section 55(1) it would have specified as much.

[69] CBC also points out that FINTRAC did not attempt to invoke subsection 55(1) when a request was made to produce information. Further, BCOIPC found that it was not clear that the Report falls under 55(1), and because there is a presumption against limiting rights the ambiguity militates towards a finding that the documents in the Report be disclosed. In regards to section 73.22 of the Act, CBC submits that this section applies only to FINTRAC and does not affect any other party, including the Court.

[70] The onus is on BCLC to demonstrate that the confidentiality order is necessary (*Sierra Club*, above). CBC doubts that all the documents in the Report require protection from disclosure, and submits that BCLC has not presented any convincing evidence as to why all the documents must be lumped together. The Court has rejected similar blanket requests for confidentiality orders (*Canada (Attorney General) v Almalki*, 2010 FC 733).

[71] CBC submits there is a large public interest in reviewing this proceeding, and the accountability of how BCLC administers gaming in the province. There has been public questioning

of the integrity of the gaming system in British Columbia, and suggestions that the issue of money laundering in casinos requires additional study. CBC submits that the Court should impose a confidentiality order only to the degree necessary to protect against the harm that has been proven by BCLC, and that this can be achieved through the redaction of sensitive information from the Records, while allowing the public maximum access to the public proceeding.

ANALYSIS

[72] As *Merck & Co*, above, as well as numerous other cases dealing with Rule 51 of the *Federal Courts Rules*, make clear, a discretionary order of a prothonotary should only be reviewed *de novo* if the questions raised in the motion are vital to the final issue in the case, or the order is clearly wrong, in the sense that the exercise of discretion by a prothonotary was based upon a wrong principle or upon a misapprehension of the facts.

[73] In this appeal, no one has argued that the questions raised in the motion before the Prothonotary were vital to the underlying proceeding, and no one has argued a misapprehension of the facts. This leaves me to decide whether Prothonotary Milczynski was clearly wrong in granting the sealing order based upon her interpretation of subsection 73.21(4) of the Act. In other words, did the Prothonotary err in law in holding that the Court is required to seal the documents filed on appeal and retains no discretion to apply the test in *Sierra Club*, above.

[74] The Prothonotary's conclusions are found in paragraph 8 of her Decision:

> Although quite broad in its scope and application and contrary to the principles of an open court process, I am satisfied that the order regarding the sealing of documents and information as referred to and identified in the Act must be granted. The Act is clear as to what information must be kept confidential and sealed from public access,

> both by FINTRAC in the fulfillment of its mandate under the Act, and by the Court in the course of any appeal from the Director. It is not a matter of the exercise of the Court's discretion or the application of the test in *Sierra Club of Canada*, [2002] 2 S.C.R. 522, or reading down legislation so as to make the restriction conform as much as possible with the public interest in open court proceedings and/or the *Canadian Charter of Rights and Freedoms*. It is a matter of the application of the Act, which in the absence of any constitutional challenge, must be applied, even though as acknowledged by the parties, some of the information falling within ss.55(1) of the Act might not meet the test for confidentiality under the Rule 151 of the *Federal Courts Rules*.

[75] Before me, the parties and CBC essentially re-stated the case they made before the Prothonotary.

[76] The AG's position is that the blanket order sought by BCLC was overbroad and inconsistent with the principles of an open court process and that subsection 55(1) of the Act neither imposes an automatic ban on all information or justifies the requested "sweeping confidentiality order." The AG submits that subsection 73.21(4) does not impose a specific obligation on the Court to seal information, and at paragraph 22 of the written representations, further submits:

> Section 55(1) was never intended to shield an appellant under Part IV from the normal obligations of any litigant before the Court. Had Parliament intended to enact a "broad prohibition against disclosure" of the categories of information listed in s.55(1), as BCLC urges, it would have made that subsection applicable to everyone, not just the Centre.

[77] The AG says that it remains in the Court's discretion as to how to avoid disclosure of information, and that the Court should engage in a further analysis to determine if confidentiality is warranted under the *Sierra Club* test, to determine:

(i) whether a confidentiality order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and

(ii) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

[78] In oral submissions before me, the AG submitted that the Court could permit disclosure of some documents that were captured by subsection 55(1) of the Act, following a review and analysis of those documents and, after applying the *Sierra Club* test, it found that such documents did not warrant protection.

[79] In oral submissions before me, CBC contended that Parliament only intended third-party personal information to be covered by subsection 55(1) of the Act and referred the Court to basic rules of statutory interpretation to try and demonstrate that this was indeed Parliament's intent. In looking at the provisions of the Act, CBC advised the Court to pay particular attention to:

a. The presumption against limiting rights as recently re-stated in the Supreme Court of Canada decision in *CBC*, above, at paragraph 1;

b. The presumption of recurring patterns, which as, Ms. Ruth *Sullivan* in *Sullivan on the Construction of Statutes* (5th) Markham: Lexis Nexis, 2008 at 476 points out is based on the presumption that the legislature creates general schemes that are rational, coherent, and economical so that if comparable matters are meant to receive

the same treatment, they should be dealt with in identical or parallel fashion within the legislative scheme of the Act;

c. The concept of different words/different meanings so that, for instance, Parliament would have expressly referenced the Notice of Violation if it had intended it to be kept confidential under subsection 55(1) of the Act;

d. The open court principle and confidentiality orders. See *Sierra Club*, above.

[80] When I review Prothonotary Milczynski's Decision, I see that she has in her own way addressed the arguments raised by CBC and the AG, and she has presented a clear and cogent rationale for her conclusions at paragraphs 21, 22, 23, 27 and 29:

> However, these submissions fail, to take into account the clear and unambiguous language in section 55(1) of the Act that does not refer to the non-disclosure of any particular report or document, but the information that may be contained in one of a number of documents or reports, or that relates to the enforcement of FINTRAC's objects, which necessarily includes ensuring compliance with Part 1 (ss.40(e)). Section 55(1)(e) also makes clear and unambiguous reference to information prepared by FINTRAC from information referred to in paragraphs (a) to (d) of ss.55(1) – which is information submitted by BCLC in compliance with BCLC's reporting requirements under Part 1 of the Act.
>
> The information that is submitted and sought to be protected in this proceeding is the prescribed financial transaction information provided by BCLC to FINTRAC pursuant to ss. 9 of the Act and also relates to the information obtained in the administration and enforcement of Part 3 of the Act, and what was prepared by FINTRAC from information referred to in ss. 55(1)(b) of the Act. It is information relating to the manner in which BCLC records, monitors or otherwise deals with financial transactions in which money laundering and terrorist financing activities may be detected and reported. Parliament has intended that the Act protect findings made by FINTRAC as well as the information regarding how FINTRAC administers compliance – the Act requires that the

integrity of FINTRAC's compliance and enforcement policies and procedures be protected.

Moreover, the intention of Parliament is further made clear by ss. 73.22 of the Act that provides that only after proceedings in respect of a violation have concluded, can FINTRAC make public the nature of the violation, the name of the person or entity that committed it, and the amount of the penalty imposed. It would make little sense for this provision to be included in the Act, if through the proceedings in this Court, all of the information relating to the violation was already disclosed.

[…]

As noted above, however, in the absence of a constitutional challenge to the non-disclosure provisions of the Act, there is no basis for the Court to engage in this analysis or balancing exercise. It can only be conducted for those documents or other information which fall outside ss.55(1) of the Act, but in respect of which a confidentiality order is sought. That analysis may be required on a further motion, but with respect to the four documents identified by CBC for release (having regard to the table of concordance referencing the information contained therein to the Act), and with respect to all other documents falling within ss.73.21(4) of the Act, the requirement of non-disclosure is clear and unambiguous. The Court cannot apply Rule 151 considerations to "less important" documents captured in ss. 55(1) by operation of the Act, and to the extent either the CBC or AG are inviting the Court to apply *Charter* considerations in the interpretation of the non-disclosure provisions, this would constitute a veiled constitutional challenge, without the requirements for such challenge being satisfied. As noted by BCLC, the decision of *Canada (Information Commissioner) v. Canada (Prime Minister)*, [1993] 1 F.C. 427 is directly on point, where similarly, there was an express derogation of a protected right:

> Para. 89 Counsel for Ms. Calamai says that he does not challenge the constitutionality of s.14. Indeed he says it is valid and there are occasions when a refusal to disclose would be justified. However, if s.14 expressly confers the power on the government to limit an assumed protected right (access to government information), the attack must be on the constitutional validity, applicability or operability of s. 14. This requires compliance with s. 57 of the Federal Court Act.

> 90. In effort to get around s. 57, counsel argues that s. 14 must only be "construed" with a view to para. 2(b) of the *Charter* and that this is different than questioning the validity, applicability or operability of the section.
>
> 91. While there may be circumstances where an argument relating to the construction of a statue does not involve the question of its validity, applicability or operability, I cannot appreciate such a distinction in this case based upon the arguments made. Counsel argues that the information in question here contributes to "core values" thereby creating a prima facie right of access and that in these circumstances the exemption in s. 14 is narrowed by para. 2(b) of the *Charter*. This argument if accepted would, to my mind, result in the inapplicability or inoperability of the exemption under s. 14 or at least the limiting or narrowing of the applicability or operability of the exemption when documents relating to core values are at issue. If it does not result in the limiting or narrowing of the applicability or operability of the exemption then "construing" s.14 in light of the Charter serves no useful purpose.
>
> 92. With respect to the *Charter* arguments…..
>
> ****
>
> ….in the absence of required notice, which may possibly lead to the hearing of additional submissions, I will not adjudicate the *Charter* challenge….

[…]

Similarly, in the within proceeding, and as noted above, I find that the express non-disclosure provisions of the Act governing the treatment of designated information in an appeal in this Court constitute an unambiguous derogation from protected rights (freedom of expression, open courts), in respect of which any challenge requires a notice of constitutional question as required by section 75 of the *Federal Courts Act*. The confidentiality order must be granted for information falling within ss.55(1) of the Act, even for that designated information that might not otherwise have been so

> protected on application of Rule 151 of the *Federal Courts Rules* and *Sierra Club*.

[81] I cannot say that Prothonotary Milczynski was clearly wrong in her interpretation and application of the statutory provisions at issue in this appeal. In fact, I concur with her interpretation of those provisions.

[82] The AG and CBC simply cannot accept that Parliament would have intended to set aside the open court principle in this context. In my view, however, they have not raised a principle of statutory interpretation that supports a conclusion that the Prothonotary was clearly wrong in this case.

[83] Indeed, as BCLC points out, there is much to support the Prothonotary's approach and her conclusions:

a. The plain and ordinary meaning of the express words of subsection 73.21(4) of the Act specifically directs the Court to take every reasonable precaution to avoid the disclosure of subsection 55(1) information. It does not direct the Court to decide whether subsection 55(1) information requires protection in accordance with *Sierra Club* principles;

b. Unless sealing occurs, information filed in a proceeding that falls under subsection 55(1) will be publicly disclosed and the mandatory requirements of the Act will be frustrated;

c. There is at least some weight to the argument that subsection 73(22) of the Act, in severely limiting what FINTRAC can reveal once the appeal has been decided,

indicates that Parliament's intention was to prevent the disclosure of subsection 55(1) information;

d. The objectives of the Act and its whole context suggest that Parliament has good reason to protect subsection 55(1) information during the appeal process in a way that would not undermine the objectives and methods of FINTRAC in dealing with international terrorism and money laundering. In order to deal with these matters effectively, an express derogation of rights may be necessary, and this supports the interpretation of subsection 73.21(4) taken by the Prothonotary;

e. Contrary to CBC's submissions, I see no redundancy between subparagraphs (e) and (f) and the other subparagraphs of subsection 55(1). Subsection (e) clearly refers to "information prepared by the Centre" from information referred to in paragraphs (a) to (d), and (f) covers "other information, other than publicly available information, obtained in the administration or enforcement of this Part." The earlier subsections refer to specific reports and information that are linked to specific sections of the Act.

[84] Neither the AG or CBC dispute that Parliament can, and does, derogate from the open court principle when the context requires. They simply disagree that the context in this case requires it. In order to support their position they neglect the plain and obvious meaning of subsection 73.21(4) and ask the Court to read in *Sierra Club* principles. As Prothonotary Milczynski pointed out, the plain and obvious non-disclosure provisions of the Act governing the treatment of the designated information do not allow this.

[85] I also agree with BCLC that the cases of *Ruby*, above, and *Hunter*, do not really help the AG and that neither case is inconsistent with Prothonotary Milczynski's reasons or conclusions.

[86] In *Ruby*, the only issue was whether the Court was required to protect the designated materials by use of a particular method such as *in camera* proceedings. This presents no inconsistencies with the Decision. The *Hunter* decision actually supports Prothonotary Milczynski's analysis, with the Federal Court of Appeal saying at paragraph 13:

> Section 47 of the Access to Information Act imposes on the Court that is seized of a section 41 application the duty to "take every reasonable precaution ... to avoid the disclosure by the Court or any person of any information ... on the basis of which the head of a government institution would be authorized to refuse to disclose a part of a record requested under this Act". It necessarily follows that the Court is prohibited from ordering the disclosure of information contained in a record without having first determined that the information in question must be disclosed. As the section does not distinguish between disclosure to an applicant, his counsel and the public, this implied prohibition applies to any disclosure including confidential disclosure to an applicant or his counsel. The Court has no discretion to order or authorize disclosure if it deems it necessary or useful; it has the absolute duty to take the necessary precautions to avoid the disclosure. The only discretion that section 47 gives to the Court relates to the choice of the means to avoid the disclosure….

[87] It is also worth pointing out that the Prothonotary's interpretation of the Act is not inconsistent with other provincial and federal legislative schemes. As pointed out by BCLC, the Nova Scotia Court of Appeal has interpreted a statutory provision very similar to that found in subsection 73.21(4) of the Act as ordering that documents that come under that provision be sealed (see *Coates*, above; *Shannex*, above). The mandatory language limiting disclosure under the AIA has also been given its plain meaning by the Federal Court of Appeal (*Blank*, above).

Conclusions

[88] The AG and CBC have not convinced me that Prothonotary Milczynski was clearly wrong in her interpretation of the non-disclosure provisions of the Act or the consequences of that interpretation. In fact, I concur with her findings and conclusions.

[89] This is not to say that the AG and CBC have not raised extremely important issues as to whether the Act breaches Charter rights. Before me, however, they argued that the appeal motion simply raised matters of statutory interpretation. In my view, what they are seeking to assert can only be done by a way of constitutional challenge.

ORDER

THIS COURT ORDERS that

1. The appeal is dismissed with costs to British Columbia Lottery Corporation.

"James Russell"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	T-1801-10
STYLE OF CAUSE:	**BRITISH COLUMBIA LOTTERY CORPORATION** **and** **ATTORNEY GENERAL OF CANADA**
PLACE OF HEARING:	Toronto, Ontario
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