Federal Court  Cour fédérale

Date: 20110818

Docket: T-1070-10

Citation: 2011 FC 1006

Ottawa, Ontario, August 18, 2011

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

TIMOTHY EDW. LEAHY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to section 41 of the *Privacy Act*, RS, 1985, c P-21 (the *Privacy Act*), for judicial review of a decision of Citizenship and Immigration Canada (CIC), dated February 19, 2009, refusing to allow the applicant access to certain materials in its possession.

[2] The applicant requests in his notice of application:

1. an order compelling the respondent to disclose all materials, documents, items, etc. contained in any and all files, under whatever name and located in any of the respondent's entities

be they located in Ottawa, in any local Canadian agency/bureau/board/centre/office etc. or in any post abroad, wherein the applicant is the subject, object or is referenced and which item was recorded from January 2007 until the date the disclosure is made;

2. an order prohibiting the respondent from asserting privilege over any such item relating to:

   a. improper conduct;

   b. any effort

      i. to deprive the applicant or his firm Forefront Migration Ltd., of any client, or

      ii. to separate them from a client,

      iii. to impede the applicant from earning a living, or

      iv. any effort to treat their clients unfavourably because Mr. Leahy was/is assisting them;

3. an order imposing a sixty-day deadline for full disclosure and a penalty of $500 per day thereafter until full disclosure occurs; and

4. an order of costs to the applicant in an amount of no less than $10,000.

[3] The applicant requests in his memorandum of fact and law:

1. an order for:

   a. release of all material surrounding the creation, dissemination and internal reaction to the 2007 Operations Instructions re: the applicant, absent a properly-based exemption from the Minister, who, in so doing, reveal that he was fully informed of the facts surrounding their creation and the purpose thereof;

   b. canvass all recipients of the 2007 Operation Instructions and disgorge:

i. all communications to and from Forefront Migration Ltd. clients pertaining to the issue of whether the applicant met the definition of "authorized representative";

ii. all communications to, from and between CIC personnel in points-of service and NHQ arising out of the 2007 Operations Instructions and;

iii. comments inserted into the CAIPS data-base files where the applicant was named the "authorized representative"

c. release noted pertaining to the applicant from the October 2007 Immigration Program Manager's meeting, as well as pertinent communications between the IPM's;

d. disclose the following material held in the IRB and any division thereof:

i. all material held in Ottawa and Toronto arising from August 2007 to January 2008, including insertions into files of Forefront Migration Ltd. clients, and

ii. all material held in Ottawa or Toronto in any file under the applicant's name, and

e. all material arising out of the applicant having offered his services to the then Minister of Citizenship and Immigration.

Background

[4] Timothy Edward Leahy (the applicant) is a lawyer with Forefront Migration Ltd.

[5] In September 2007, the International Region branch of CIC discovered that the applicant was listed by the Law Society of Upper Canada (LSUC)'s Member Directory as "Not Practicing Law – Employed". This is defined by LSUC as "a lawyer who is employed by an organization… and who does not provide legal services."

[6] Section 2 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations), defines an authorized representative as:

"authorized representative" means a member in good standing of a bar of a province, the Chambre des notaires du Québec or the Canadian Society of Immigration Consultants incorporated under Part II of the *Canada Corporations Act* on October 8, 2003.	« représentant autorisé » Membre en règle du barreau d'une province, de la Chambre des notaires du Québec ou de la Société canadienne de consultants en immigration constituée aux termes de la partie II de la *Loi sur les corporations canadiennes* le 8 octobre 2003.

[7] CIC determined that the applicant was not a member in good standing of LSUC as he was not providing legal services so was not required to contribute to the compulsory professional liability insurance plan. He, therefore, was not an authorized representative under the Regulations.

[8] The International Region of CIC issued Operational Instruction 07-040 (RIM) on September 25, 2007, to all visa offices indicating that the applicant was not considered an authorized representative and no visa office should have contact with him. This operational instruction further indicated that a letter should be sent to the applicant stating that there would be no further contact with him. The operation instruction also directed letters to be sent to all those who had listed the applicant as their authorized representative in any dealings with CIC. These letters indicated that the applicant was not considered to be an authorized representative and that the recipients of the letter

needed to appoint another representative or be self-represented in order to proceed with their applications.

[9] On January 18, 2008, CIC issued Operational Instruction 08-002 (RIM) indicating that the information from the LSUC had changed and the applicant would now be considered an authorized representative.

[10] On May 16, 2008, the applicant made a request for information under section 12 of the *Privacy Act* to the Access to Information and Privacy (ATIP) branch of CIC (the access request).

[11] The access request was for:

> copies of all items, emanating from, or received by, CIC and pertaining to me directly or indirectly. My request encompasses correspondence, emails, telephone messages and any other recorded items. The initial time frame is from 1 January 2007 and extends to the date this request is executed and includes NHQ, visa-posts, CPC's CIC's etc.

[12] Peter Maynard, an ATIP administrator, contacted the applicant on May 22, 2008 to indicate that the request would include communications from January 1, 2007 to May 16, 2008, but that the applicant needed to provide sufficiently specific information on the location of the materials in order for CIC to retrieve them.

[13] The applicant replied:

> …you start with Legal, seeking direction from someone there. I am sure that you can find someone who can direct you to the NHQ cabal orchestrating a worldwide campaign to destroy my company and me,

> including, but not limited to, sending a memorandum to various, if not all, visa-posts ordering direct interference with our clients.

[14] The applicant also replied that the request should continue until the date of disclosure.

[15] Mr. Maynard found that this request was unreasonable and contrary to section 12 of the *Privacy Act*. Continual disclosure was also found to be unreasonable. He reframed the request as:

> I (Timothy Leahy) am requesting copies of all items, emanating from, or received by, CIC and pertaining to me, directly or indirectly. My request encompasses correspondence, emails, telephone messages and any other recorded items. The initial time frame is from 1 January 2007, until May 16, 2008.

[16] Mr. Maynard sent this request to CIC's International Region, the Immigration Branch, the Operation Management and Coordination, and the Case Management and Departmental Secretariat on June 2, 2008.

[17] On June 11, 2008, a 30 day extension was taken by CIC pursuant to section 15 of the *Privacy Act* due to the need for external consultations.

[18] Through a letter dated February 19, 2009, the acting manager, Complex Cases and Issues of Citizenship and Immigration Canada (the acting manager), informed the applicant that his request had been processed and disclosed a total of 87 pages.

[19] In this letter, the acting manager indicated that some documents were exempted pursuant to sections 26 and 27 of the *Privacy Act*, third party information and solicitor-client privilege

respectively. Further, the disclosure did not include any documents in the possession of the Immigration and Refugee Board (IRB).

[20] The applicant made a complaint to the Privacy Commissioner who investigated the matter but found that the complaint was not well-founded.

[21] With a letter dated October 29, 2010, the applicant was provided with an additional release of 22 pages.

[22] The applicant applied for judicial review of the refusal to disclose information, pursuant to section 41 of the *Privacy Act*.

Issues

[23] The applicant submitted the following issues for consideration in his memorandum of fact and law:

1. The respondent's agents wilfully breached the statutory disclosure deadline and delayed even partial disclosure well beyond a reasonable period;

2. Access requests made to the Department of Citizenship and Immigration applies to all entities falling under the respondent's purview;

3. In order to avoid repeat requests being made every month, the disclosure period should extend to 90 days before disclosure whenever disclosure is not made within the statutory time-frame;

4. The *Privacy Act* entitles the applicant to the terms he sought and is seeking;

5. Exemption from disclosure may not be claimed whenever the material sought to be concealed relates to improper, actionable or illegal activity;

6. Material was withheld contrary to the required statutory procedures; and

7. The respondent should be compelled to compensate the applicant for having concealed more material than released and for the delay in releasing it.

[24] I would rephrase the issues as follows:

1. What is the appropriate standard of review?

2. Did the respondent err by limiting the scope of the request?

3. Did the respondent err by limiting the access request to a specific period of time?

4. Did the respondent err by delaying disclosure past the statutory required time-frame?

5. Did the respondent err by exempting certain information from disclosure pursuant to section 26 of the *Privacy Act*?

6. Did the respondent err by exempting certain information from disclosure pursuant to section 27 of the *Privacy Act*?

Applicant's Written Submissions

[25] The applicant submits that the respondent erred by limiting his access request. He argues that the respondent was in the best position to ascertain what branches of CIC took action regarding the Operational Instructions and that he should not have been required to limit his request. The

applicant further submits that CIC ought to have included material from the IRB in its disclosure or informed him that he needed to make a separate request.

[26] Concerning the timing of disclosure, the applicant submits that the respondent erred by delaying disclosure past the statutory deadline. He argues that where the respondent fails to disclose within 60 days of a request, the end date of the request ought to continue until 90 days before the release of information in order to avoid never-ending access requests.

[27] The applicant emphasizes that the respondent has the burden of proving that it may properly withhold information. He submits that the third party information from the LSUC should be disclosed as it pertains to the applicant and the LSUC has not indicated that it wishes the information to be withheld.

[28] For exemptions based on solicitor-client privilege, the applicant submits that the respondent bears the burden of proving that any solicitor-client privilege applies to the withheld material. In addition, only the qualifying material, not necessarily the entire document, may be exempted. Further, the applicant submits that the respondent must prove that any refusal of disclosure would not result in an injustice.

[29] The applicant argues that the respondent has not met the burden for establishing that each requisite element of solicitor-client privilege is present. The communications did not remain confidential because the respondent forwarded the advice to others. The applicant argues that where information is shared amongst bureaucrats, solicitor-client privilege is waived. Further, the applicant

submits that solicitor-client privilege does not apply when government lawyers are acting in a non-legal capacity.

[30] The applicant also submits that the communications were not legal advice. He argues that legal advice entails leading to or arising from the making of a legal opinion. He further argues that the dominant purpose for the communications was not litigation but rather to drive him out of business and as such, litigation privilege does not apply.

[31] The applicant submits that solicitor-client privilege may not be invoked in furtherance of activity which is not lawful, including tortious activity. As the respondent committed a wrong by attempting to drive the applicant out of business, privilege does not apply. Even if the activity were legal, legal advice from a government lawyer must be in furtherance of the public interest.

[32] Regarding costs, the applicant submits that the long delay in disclosure by CIC and the lack of full disclosure shows that the respondent was not acting in good faith in disposing of the applicant's access request and that costs should be awarded.

Respondent's Written Submissions

[33] The respondent submits that there was no error in the processing of the access request. The request was limited in scope because the applicant failed to comply with section 12 of the *Privacy Act*, despite being asked to revise the request to provide sufficiently specific information on the location of the information he sought. The request did not include documents from the IRB because

the IRB is a separate government institution than that to which the applicant directed his access request. Likewise, implementing an end date for the access request was appropriate, as without it, the request would never close and continual consultations would be required.

[34] The respondent submits that as the applicant is now in receipt of any delayed disclosed documents, any issue with respect to time lines of disclosure is moot.

[35] The respondent submits that both the exemptions pursuant to sections 26 and 27 of the *Privacy Act* were correctly applied. The information exempted under section 26 is very limited and relates only to information about an individual other than the applicant.

[36] The withheld information was correctly exempted pursuant to section 27 and solicitor-client privilege. The communications were intended to be confidential and were between the Crown as the client and legal counsel of the Crown acting in their capacity as lawyers. At no point was the information shared with third parties outside of the solicitor-client relationship. The information contained in the communications fell within the "continuum of communications" and related to the formulation, seeking or giving of legal advice. The cases relied on by the applicant to show that waiver occurred are not applicable. In those cases, information was shared between in-house counsel and outside parties resulting in waiver of solicitor-client privilege. This was not so in the case at bar.

[37] Further, the respondent submits that the applicant has failed to demonstrate a basis for his allegation of wrongdoing that would render the solicitor-client privilege waived. In addition, since

solicitor-client privilege is a near absolute protection, there is no balancing of interests in the case of an exemption of access to information based on privilege as opposed to other exemptions.

[38] The respondent also submits that severance does not apply under the *Privacy Act* as it does in the *Access to Information Act*, RS, 1985, c A-1, and even if severance did apply in the *Privacy Act* context, it does not apply so as to require the Court to conduct a surgical operation on the privileged records.

[39] Finally, the respondent submits that the exemptions were properly made with respect to litigation privilege.

Analysis and Decision

[40] **Issue 1**

What is the appropriate standard of review?

In this case, the respondent refused access to all or part of the records which form the basis of this judicial review, after finding that they were exempt from disclosure under sections 26 and 27 of the *Privacy Act*.

[41] The Supreme Court held in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paragraph 57, that where previous jurisprudence has determined the standard of review applicable to a particular issue before the court, the reviewing court may adopt that standard.

[42] The Federal Court of Appeal in *Blank v Canada (Minister of Justice)*, 2010 FCA 183, [2010] FCJ No 897, while dealing with the standard of review for a claim of solicitor-client privilege under section 23 of the *Access to Information Act*, a section which is identical to section 27 of the *Privacy Act* stated at paragraphs 16 and 17:

> 16 In this case, the respondent invoked the solicitor-client privilege exemption under section 23. Following an analysis of the relevant case law (especially this Court's decision in *3430901 Canada Inc. v. Canada (Minister of Industry)*, 2001 FCA 254, [2002] 1 F.C. 421 and *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, 2008 SCC 9), the Federal Court set out the standard of review of the respondent's decision as follows (at paragraph 31):
>
> > ...two different standards of review [are to be followed] with regard to the respondent's decision to refuse to release information pursuant to the solicitor-client privilege exemption in s. 23 of the Act. It must apply the correctness standard to review the decision that the withheld information falls within the s. 23 statutory exemption, and the standard of reasonableness to the discretionary decision to refuse to release exempted information. Of course, the Court must also consider whether the discretion was exercised in good faith and for a reason rationally connected to the purpose for which it was granted.
>
> 17 For the purposes of this appeal, we accept this as the standard of review.

[43] I will apply these standards to this judicial review of the section 26 and 27 exemptions.

[44] **Issue 2**

Did the respondent err by limiting the scope of the request?

The applicant's original access request would have included information from 92 overseas missions and every employee at the national headquarters and case processing centres of CIC, amounting to communications between thousands of employees.

[45] The respondent determined that such a request did not fall within the requirements of the *Privacy Act*, paragraph 12(1)(b) which obliges an individual seeking information to:

> …provide sufficiently specific information on the location of the information as to render it reasonably retrievable by the government institution.

The applicant was requested to provide more specific information, which he failed to do.

[46] The decision to limit the terms of the access request was correct given that the applicant did not provide sufficiently specific information about what he was seeking.

[47] Further, it was correct for the respondent not to include information in the possession of the IRB.

[48] Subsection 13(2) of the *Privacy Act* states that an access request made under section 12 shall be made in writing to the government institution that has control of the information.

[49] The IRB operates separately from CIC and is also considered a separate government institution under Schedule 3 of the *Privacy Act.* As the applicant directed his section 12 access request only to the Department of Citizenship and Immigration, it was correct for the respondent to limit the disclosure to that institution.

[50] **Issue 3**

Did the respondent err by limiting the access request to a specific period of time?

The applicant submits that the respondent ought not to have imposed the end date of May 16, 2008 to his access request. Further, the applicant urges the Court to hold that where disclosure is not complete within 60 days of a request, the end date of the request ought to continue until 90 days before the release of information, in order to avoid never-ending access requests.

[51] I agree with the respondent, that neither of the applicant's submissions is feasible.

[52] As recognized in the *Privacy Act*, disclosure through access requests takes time. The Act implements a 30 day deadline, but allows for an additional 30 days where external consultations must take place. An end date to the disclosure period is necessary in order for disclosure to be completed in a timely fashion. Were the end date of disclosure to be the date that disclosure is made, then the process of completing consultations might never end.

[53] Further, no where in the Act has Parliament created the type of regime whereby the date of disclosure is ongoing based on the respondent's ability to meet the statutory time lines. It is not this Court's role to create such a regime.

[54] **Issue 4**

Did the respondent err by delaying disclosure past the statutory required time-frame?

Under section 14 of the *Privacy Act*, the head of the government institution is to give either notice about whether access to the information will be given, or give actual access within 30 days. An extension of 30 days is allowed under paragraph 15(a)(ii) where consultations are required.

Under subsection 16(3), where access is not given within the time limits set out in the Act, "…the head of the institution shall, for the purposes of this Act, be deemed to have refused to give access."

[55] The respondent complied with sections 14 and 15 but did not meet the statutory time line and therefore was deemed to have refused access under subsection 16(3). The applicant could have brought a judicial review of the refusal of access after the 60 day period.

[56] However, the applicant has now received the disclosure which would have been deemed refused.

[57] In such a case, the refusal is moot. In *Dagg v Canada (Minister of Industry)*, 2010 FCA 316, the Federal Court of Appeal held that a judicial review of a deemed refusal of access under the *Access to Information Act*, RS, 1985, c A-1 (the *Access Act*) was moot since the access had been provided before the judicial review was heard (see paragraphs 12 to 14).

[58] This judicial review only relates to the refusal to allow access to certain exempted material which was refused under sections 26 and 27 of the Act. There is no need to review the respondent's delay in disclosure and deemed refusal of information which was subsequently disclosed on February 19, 2009.

[59] **Issue 5**

Did the respondent err by exempting certain information from disclosure pursuant to section 26 of the *Privacy Act*?

The number of instances where section 26 was invoked to exempt material from disclosure to the applicant was very few.

[60] I have reviewed the materials and determined that each instance correctly involves the personal information of a third party.

[61] The applicant has submitted that any correspondence with the LSUC should not be exempt, as it is not privileged and the LSUC has not requested it remain confidential. However, the communications with the LSUC contained in the undisclosed materials, originate prior to January 2007, which was the start of the disclosure period. For this reason, they are outside of the scope of the disclosure and are not required to be disclosed.

[62] **Issue 6**

Did the respondent err by exempting certain information from disclosure pursuant to section 27 of the *Privacy Act*?

The Supreme Court held in *Blank v Canada (Department of Justice)*, 2006 SCC 39, [2006] 2 SCR 319, that section 23 of the *Access Act* which allows for exemptions based on "solicitor-client privilege" is deemed to include both legal advice privilege and litigation privilege (at paragraphs 3 and 4).

[63] Similarly, I consider section 27 of the *Privacy Act* which allows for exemptions based on solicitor-client privilege, to be inclusive of legal advice or solicitor-client privilege and litigation privilege.

[64] I have reviewed the documents which the respondent exempted pursuant to section 27 of the *Privacy Act.*

Solicitor-Client Privilege

[65] Solicitor-client privilege is a fundamental aspect of the administration of justice and "…should only be set aside in the most unusual circumstances, such as a genuine risk of wrongful conviction" (see *Pritchard v Ontario (Human Rights Commission)*, 2004 SCC 31, [2004] 1 SCR 809 at paragraph 17).

[66] The Supreme Court has delineated the criteria for establishing solicitor-client privilege on several occasions (see *Pritchard* above, at paragraph 15; *Solosky v Canada* (1979), [1980] 1 SCR 821 at page 837).

[67] The document in question must be:

1. a communication between solicitor and client;
2. which entails the seeking or giving of legal advice; and
3. which is intended to be confidential by the parties.

[68] The documents in question clearly constitute communications. However, the applicant submits that in many cases the communications are not between a solicitor and client.

[69] The Supreme Court considered the role of "in-house" counsel in *Pritchard* above. The Court noted that the label "in-house" does not change the applicability of privilege. Following *R v Shirose*, [1999] 1 SCR 565, the Court held that the important consideration is the capacity in which a lawyer is working, as these lawyers have roles which are both legal and non-legal. When "in-house" lawyers give legal advice to a client department, solicitor-client privilege applies. However, privilege will not attach where an in-house lawyer is advising in a non-legal or policy capacity. This analysis depends on the "…nature of the relationship, the subject matter of the advice, and the circumstances in which it is sought and rendered" (see *Pritchard*, above at paragraph 20).

[70] The Federal Court of Appeal defined the scope of legal advice in *Samson Indian Nation and Band v. Canada*, [1995] 2 FC 762, [1995] FCJ No 734 (QL) (FCA), stating at paragraph 8 that:

> … it is not necessary that the communication specifically request or offer advice, as long as it can be placed within the continuum of communication in which the solicitor tenders advice; it is not confined to telling the client the law and it includes advice as to what should be done in the relevant legal context.

[71] Further, the Federal Court of Appeal held in *Blank v Canada (Minister of Environment)*, 2001 FCA 374 at paragraph 19, that solicitor-client privilege applies to:

> **…**[t]hose communications either seek or give legal advice, or represent an integral part of the ongoing dialogue relating generally to the matter… in which the legal advice is expressly or implicitly referred to.

[72] The vast majority of the documents under review deal with the seeking and rendering of legal advice. There is also discussion and a legal opinion. As well, there are communications on the legalities and effect of certain documents. These communications were made by counsel acting in

their capacity as lawyers, not in another capacity providing policy advice. Further, this information sharing was to remain confidential and the information was never shared with third parties outside of the Client Department of Citizenship and Immigration such that any waiver of privilege would have occurred. While there was communication between non-lawyers, this communication fits comfortably within the “continuum of communication” between the Department of Justice and members of its client, the Department of Citizenship and Immigration.

Litigation Privilege

[73] The Supreme Court held in *Blank* above, that litigation privilege can be invoked only when litigation is pending or apprehended and where the material was created with the dominant purpose of litigation (*Blank* SCC above, at paragraph 60). Further, the Court held at paragraph 39 that litigation privilege:

> …includes separate proceedings that involve the same or related parties and arise from the same or a related cause of action (or "juridical source"). Proceedings that raise issues common to the initial action and share its essential purpose would in my view qualify as well.

[74] The applicant has been involved in much litigation against the respondent over the past several years. This includes two actions beginning on July and November 2007 which are ongoing and ten immigration applications on which the applicant was the named solicitor, all within the disclosure period.

[75] The Supreme Court noted in *Blank* SCC above, at paragraph 53, that under the *Access Act*, the government may be required to disclose information when the original proceeding ends and pending litigation is not apprehended. However, I agree with the respondent that this is not such a case. Litigation was not only apprehended, but several actions were pending at the time of disclosure. There is also a common thread between the ongoing litigation. They have the same party and the same complaints were raised concerning the Department of Justice's interpretations. Many of the respondent's exempted documents involved strategies on resolving these actions. As such, litigation privilege applied and was extensively connected to the legal advice rendered.

[76] Finally, a small number of documents were outside the scope of the access request or disclosure period and were not disclosed for that reason. In addition, a large portion of the documents are duplicates. These were reasonable refusals of disclosure.

Severance

[77] The Federal Court of Appeal discussed the issue of severance in relation to the *Access Act* in *Blank v Canada (Department of Justice)*, 2007 FCA 87. The Court held that severance should only be applied as a way that preserves the integrity of the privilege. At paragraph 13, that Court held:

> It is not Parliament's intention to require the severance of material that forms a part of the privileged communication by, for example, requiring the disclosure of material that would reveal the precise subject of the communication or the factual assumptions of the legal advice given or sought.

[78] Unlike the *Access Act*, the *Privacy Act* does not mention severance of documents where part of the document is to be exempt. That said, even if severance were to apply to the *Privacy Act*, the

respondent was not required to severe documents that contain privileged information in a manner which could reveal factual assumptions. Given my analysis on solicitor-client and litigation privilege above, I do not consider there to be documents that the respondent should have severed and partially disclosed.

Unlawful Activity

[79] The applicant is correct to submit that solicitor-client privilege does not apply where the communication has the purpose of furthering unlawful conduct (see *Solosky* above, at page 835). Likewise, litigation privilege will not apply where the party seeking disclosure can show an actionable wrong by the other party (see *Blank* SCC, above at paragraph 45). However, the burden to demonstrate a claim of wrongdoing rests with the applicant (see *Blank v Canada (Minister of Environment)*, 2007 FCA 289 at paragraph 10) and he has not met this burden in this case. He has not demonstrated any unlawful conduct or actionable wrong on the part of the respondent.

[80] I am satisfied that the respondent was correct in its finding that the withheld information fell within sections 26 and 27 statutory exemptions. I am also satisfied that the respondent's decision to refuse to release the exempted information was reasonable.

[81] For the above reasons, I find that the material exempted from disclosure by the respondent was within the bounds of sections 26 and 27 of the *Privacy Act.*

[82] I would therefore dismiss the application for judicial review with costs to the respondent. The applicant requested an award of costs. I will not, based on the facts of this judicial review, make an award of costs to the applicant as his application was not successful.

JUDGMENT

[83] **IT IS ORDERED that** the application for judicial review is dismissed with costs to the respondent. As noted above, there shall be no award of costs to the applicant.

"John A. O'Keefe"
Judge

ANNEX

Relevant Statutory Provisions

Privacy Act (RS, 1985, c P-21)

2. The purpose of this Act is to extend the present laws of Canada that protect the privacy of individuals with respect to personal information about themselves held by a government institution and that provide individuals with a right of access to that information.	2. La présente loi a pour objet de compléter la législation canadienne en matière de protection des renseignements personnels relevant des institutions fédérales et de droit d'accès des individus aux renseignements personnels qui les concernent.
3. . . .	3. . . .
"government institution" means	« institution fédérale »
(a) any department or ministry of state of the Government of Canada, or any body or office, listed in the schedule, and	a) Tout ministère ou département d'État relevant du gouvernement du Canada, ou tout organisme, figurant à l'annexe;
(b) any parent Crown corporation, and any wholly-owned subsidiary of such a corporation, within the meaning of section 83 of the *Financial Administration Act*;	b) toute société d'État mère ou filiale à cent pour cent d'une telle société, au sens de l'article 83 de la *Loi sur la gestion des finances publiques*.
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 Protect 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.

(2) Every individual who is given access under paragraph (1)(a) to personal information that has been used, is being used or is available for use for an administrative purpose is entitled to

(2) Tout individu qui reçoit communication, en vertu de l'alinéa (1)a), de renseignements personnels qui ont été, sont ou peuvent être utilisés à des fins administratives, a le droit :

(a) request correction of the personal information where the individual believes there is an error or omission therein;

a) de demander la correction des renseignements personnels le concernant qui, selon lui, sont erronés ou incomplets;

(b) require that a notation be attached to the information reflecting any correction requested but not made; and

b) d'exiger, s'il y a lieu, qu'il soit fait mention des corrections qui ont été demandées mais non effectuées;

(c) require that any person or body to whom that information has been disclosed for use for an administrative purpose within two years prior to the time a correction is requested or a notation is required under this subsection in respect of that information

c) d'exiger :

(i) be notified of the correction or notation, and

(i) que toute personne ou tout organisme à qui ces renseignements ont été communiqués pour servir à des fins administratives dans les deux ans précédant la demande de correction ou de mention des corrections non effectuées soient avisés de la correction ou de la mention,

(ii) where the disclosure is to a government institution, the institution make the correction or notation on any copy of the information under its control.

(ii) que l'organisme, s'il s'agit d'une institution fédérale, effectue la correction ou porte la mention sur toute copie de document contenant les renseignements qui relèvent de lui.

(3) The Governor in Council may, by order, extend the right to be given access to personal information under subsection (1) to include individuals not referred to in that subsection and may set such conditions as the Governor in Council deems appropriate.

(3) Le gouverneur en conseil peut, par décret, étendre, conditionnellement ou non, le droit d'accès visé au paragraphe (1) à des individus autres que ceux qui y sont mentionnés.

14. Where access to personal information is requested under subsection 12(1), the head of the government institution to which the request is made shall, subject to section 15,

14. Le responsable de l'institution fédérale à qui est faite une demande de communication de renseignements personnels en vertu du paragraphe 12(1) est tenu, dans les trente

within thirty days after the request is received,

jours suivant sa réception, sous réserve de l'article 15 :

(a) give written notice to the individual who made the request as to whether or not access to the information or a part thereof will be given; and

a) d'aviser par écrit la personne qui a fait la demande de ce qu'il sera donné ou non communication totale ou partielle des renseignements personnels;

(b) if access is to be given, give the individual who made the request access to the information or the part thereof.

b) le cas échéant, de procéder à la communication.

15. The head of a government institution may extend the time limit set out in section 14 in respect of a request for

15. Le responsable d'une institution fédérale peut proroger le délai mentionné à l'article 14:

(a) a maximum of thirty days if

a) d'une période maximale de trente jours dans les cas où :

(i) meeting the original time limit would unreasonably interfere with the operations of the government institution, or

(i) l'observation du délai entraverait de façon sérieuse le fonctionnement de l'institution,

(ii) consultations are necessary to comply with the request that cannot reasonably be completed within the original time limit, or

(ii) les consultations nécessaires pour donner suite à la demande rendraient pratiquement impossible l'observation du délai;

(b) such period of time as is reasonable, if additional time is necessary for translation purposes or for the purposes of converting the personal information into an alternative format,

b) d'une période qui peut se justifier dans les cas de traduction ou dans les cas de transfert sur support de substitution.

by giving notice of the extension and the length of the extension to the individual who made the request within thirty days after the request is received, which notice shall contain a statement that the individual has a right to make a complaint to the Privacy Commissioner about the extension.

Dans l'un ou l'autre de ces cas, le responsable de l'institution fédérale envoie à la personne qui a fait la demande, dans les trente jours suivant sa réception, un avis de prorogation de délai en lui faisant part du nouveau délai ainsi que de son droit de déposer une plainte à ce propos auprès du Commissaire à la protection de la vie privée.

16. (1) Where the head of a government institution refuses to give access to any personal information requested under subsection 12(1), the head of the institution

16. (1) En cas de refus de communication de renseignements personnels demandés en vertu du paragraphe 12(1), l'avis prévu à l'alinéa 14a) doit mentionner, d'une part, le droit de la

shall state in the notice given under paragraph 14(a)

personne qui a fait la demande de déposer une plainte auprès du Commissaire à la protection de la vie privée et, d'autre part :

(a) that the personal information does not exist, or

a) soit le fait que le dossier n'existe pas;

(b) the specific provision of this Act on which the refusal was based or the provision on which a refusal could reasonably be expected to be based if the information existed,

b) soit la disposition précise de la présente loi sur laquelle se fonde le refus ou sur laquelle il pourrait vraisemblablement se fonder si les renseignements existaient.

and shall state in the notice that the individual who made the request has a right to make a complaint to the Privacy Commissioner about the refusal.

(2) The head of a government institution may but is not required to indicate under subsection (1) whether personal information exists.

(2) Le paragraphe (1) n'oblige pas le responsable de l'institution fédérale à faire état de l'existence des renseignements personnels demandés.

(3) Where the head of a government institution fails to give access to any personal information requested under subsection 12(1) within the time limits set out in this Act, the head of the institution shall, for the purposes of this Act, be deemed to have refused to give access.

(3) Le défaut de communication de renseignements personnels demandés en vertu du paragraphe 12(1) dans les délais prévus par la présente loi vaut décision de refus de communication.

26. The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) about an individual other than the individual who made the request, and shall refuse to disclose such information where the disclosure is prohibited under section 8.

26. Le responsable d'une institution fédérale peut refuser la communication des renseignements personnels demandés en vertu du paragraphe 12(1) qui portent sur un autre individu que celui qui fait la demande et il est tenu de refuser cette communication dans les cas où elle est interdite en vertu de l'article 8.

27. The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) that is subject to solicitor-client privilege.

27. Le responsable d'une institution fédérale peut refuser la communication des renseignements personnels demandés en vertu du paragraphe 12(1) qui sont protégés par le secret professionnel qui lie un avocat à son client.

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.

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.

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.

52. (1) Subject to subsection (2), the costs of and incidental to all proceedings in the Court under this Act shall be in the discretion of the Court and shall follow the event unless the Court orders otherwise.

52. (1) Sous réserve du paragraphe (2), les frais et dépens sont laissés à l'appréciation de la Cour et suivent, sauf ordonnance contraire de la Cour, le sort du principal.

(2) Where the Court is of the opinion that an application for review under section 41 or 42 has raised an important new principle in relation to this Act, the Court shall order that costs be awarded to the applicant even if the applicant has not been successful in the result.

(2) Dans les cas où elle estime que l'objet du recours a soulevé un principe important et nouveau quant à la présente loi, la Cour accorde les frais et dépens à la personne qui a exercé le recours devant elle, même si cette personne a été déboutée de son recours.

73. The head of a government institution may, by order, designate one or more officers or employees of that institution to exercise or perform any of the powers, duties or functions of the head of the institution under this Act that are specified in the order.

73. Le responsable d'une institution fédérale peut, par arrêté, déléguer certaines de ses attributions à des cadres ou employés de l'institution.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1070-10
STYLE OF CAUSE:	TIMOTHY EDW. LEAHY - and - THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	February 22, 2011
REASONS FOR JUDGMENT AND JUDGMENT OF:	O'KEEFE J.
DATED:	August 18, 2011

APPEARANCES:

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