

Federal Court of Appeal



Cour d'appel fédérale

Date: 20150630

Docket: A-353-14

Citation: 2015 FCA 155

CORAM: PELLETIER J.A.
GAUTHIER J.A.
SCOTT J.A.

IN THE MATTER OF THE *PROCEEDS OF CRIME (MONEY LAUNDERING) AND
TERRORIST FINANCING ACT, S.C. 2000, C. 17*

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Appellant

and

VIOLATOR No. 10

Respondent

Heard at Montréal, Quebec, on March 16, 2015.

Judgment delivered at Ottawa, Ontario, on June 30, 2015.

REASONS FOR JUDGMENT BY:

PELLETIER J.A.

CONCURRED IN BY:

GAUTHIER J.A.
SCOTT J.A.

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Appellant

and

VIOLATOR No. 10

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REASONS FOR JUDGMENT

PELLETIER J.A.

[1] The issue in this appeal of an interlocutory judgment rendered by Justice Noël of the Federal Court is whether the provisions of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 (the Act), relating to the protection of confidential information can justify a confidentiality order covering only the style of cause of this case. This appeal arises against the backdrop of an appeal of a decision of an administrative body stating

that the requirements of the Act were not met. The order rendered by the judge provided for the possibility of making public certain documents at the end of a consultation between the parties to identify the information in the record that should not be disclosed, in accordance with subsection 55(1) of the Act. At the end of this consultation, the parties reached an agreement. Redaction of the passages containing confidential material would render unintelligible anything that could be made public. Accordingly, the appeal pertains only to the confidentiality of the style of cause.

[2] The Financial Transactions and Reports Analysis Centre of Canada (the Centre) was created under section 41 of the Act. Sections 7 and 9 of the Act impose certain duties on the persons and entities described in section 5. They must report to the Centre every financial transaction that occurs or that is attempted in the course of their activities and in respect of which there are reasonable grounds to suspect that the transaction is related to money laundering or terrorist activity financing. They must also report to the Centre certain financial transactions covered by ministerial directive or by regulation. This means that the Centre controls a large database of confidential information. The Act imposes certain obligations on the Centre with respect to this information, such as the obligation to keep it confidential:

55. (1) Subject to subsections (3) and (6.1), sections 52, 55.1, 56.1 and 56.2, subsection 58(1) and sections 65 to 65.1 and 68.1 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

55. (1) Sous réserve des paragraphes (3) et (6.1), des articles 52, 55.1, 56.1 et 56.2, du paragraphe 58(1) et des articles 65 à 65.1 et 68.1 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

made under section 7;	à l'article 7;
(a.1) information set out in a report made under section 7.1;	a.1) contenus dans une déclaration visée à l'article 7.1;
(b) information set out in a report made under section 9;	b) contenus dans une déclaration visée à l'article 9;
(b.1) information set out in a report referred to in section 9.1;	b.1) contenus dans une déclaration visée à l'article 9.1;
(b.2) information provided under sections 11.12 to 11.3 except for identifying information referred to in subsection 54.1(3);	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) information set out in a report made under subsection 12(1), whether or not it is completed, or section 20;	c) contenus dans une déclaration — complète ou non — visée au paragraphe 12(1) ou un rapport visé à l'article 20;
(d) information voluntarily provided to the Centre about suspicions of money laundering or of the financing of terrorist activities;	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.

[3] To the extent that this information is incorporated into an appeal record or filed as evidence, the Court is required to keep it confidential:

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

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

referred to in subsection 55(1).

ou celui de quiconque des renseignements visés au paragraphe 55(1).

[4] These provisions form the backdrop to this appeal, in which the issue is the confidentiality of the style of cause of the case in order to protect the identity of a person or entity challenging the conclusion of the Director of the Centre that that person or entity has committed a violation under the Act. Section 73.21 provides that the interested party may appeal from the Director's decision to the Federal Court. According to the standard practice of the Registry and the open court principle, the notice of appeal and any other pleading filed with the Registry are public documents. In this case, the respondent asked the Registry to have his notice of appeal filed under seal, on the understanding that he would obtain an order of confidentiality in his motion for an order of confidentiality. This is the motion that Justice Noël decided.

[5] The publication of the decision of the Director of the Centre would damage his reputation, which is why the respondent filed his motion. He based his motion on section 73.22, which reads as follows:

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.

[6] The respondent submits that section 73.22 of the Act would be rendered completely meaningless if the information referred to in it were made public from the time a notice of appeal is filed, which would be the case in the absence of a confidentiality order. The appellant, on the

other hand, submits that section 73.22 binds only the Centre, and that the open court principle set out in *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] 2 S.C.R. 522 (*Sierra Club*), requires that any information not expressly protected by the Act or the common law be made available to the public.

[7] Citing the Federal Court's decision in *British Columbia Lottery Corporation v. Canada (Attorney General)*, 2012 FC 1204, affirmed in *British Columbia Lottery Corporation v. Canada (Attorney General)*, 2013 FC 307 (*B.C. Lottery*), Justice Noël held that subsection 73.21(4) afforded the Court no discretion with respect to the protection of the information covered by subsection 55(1). However, because the parties agreed during the hearing before Justice Noël, that the style of cause contained none of the information covered by section 55, he based his decision regarding the style of cause on section 73.22 of the Act.

[8] I agree that the name of a person or entity subject to the reporting obligation set out in the Act is not in and of itself information covered by subsection 55(1). That said, the situation changes completely when the Director of the Centre finds that this same person or entity has contravened the Act. This finding is necessarily "information, other than publicly available information, obtained in the administration or enforcement of this Part": see paragraph 55(1)(f) of the Act. The Director's conclusion is necessarily "...information, other than publicly available information, obtained in the administration or enforcement of the Act": see paragraph 55(1)(f) of the Act. I conclude that the name of a person or entity found to have contravened the Act is, indeed, information covered by subsection 55(1) of the Act.

[9] Since subsection 73.21(4) requires the Court to take every possible precaution to ensure the confidentiality of the information covered by subsection 55(1), the Court must make any confidentiality order necessary to fulfil that duty. In the very specific context of the Act, this duty extends, exceptionally, to the name of the violator challenging the decision of the Director of the Centre, hence the confidentiality order with respect to the style of cause.

[10] Although this may appear to go against the open court principle, one must keep in mind that common law rules, including the open court principle, may be modified by statute: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at paragraph 129; *Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2001 SCC 52, [2001] 2 S.C.R. 781, at paragraphs 19-20. It should also be noted that this case can be distinguished from *Sierra Club*, which addressed the principles applicable to confidentiality orders rendered by courts exercising their inherent jurisdiction to control their own procedures. In this case, the issue involves, rather, the interpretation and application of provisions of the Act, provisions that must be considered binding until they are declared to be unconstitutional by a court.

[11] Subsection 73.21(4) and section 73.22 must be read with subsection 55(1) in mind. That provision imposes a duty of confidentiality on the Centre, a duty that would continue even after the violation proceedings have come to a close, were it not for section 73.22. That section suggests that Parliament was aware of the dissuasive power of publishing the identity of violators, the nature of their violations and the penalties imposed on them, and that it chose to

give this mandate to the Centre itself rather than leave it to the vicissitudes of public access to the Court's records.

[12] That said, in the event that the media wishes to challenge such a confidentiality order, it is entitled to a minimum amount of information to enable it to make an informed decision. I would amend Justice Noël's order in the following fashion. In order to highlight the nature of the proceedings, I would add to the style of cause the following preamble: "In the matter of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, S.C. 2000, c. 17". I would designate the appellant as "Violator No. 10", which would make it possible to distinguish subsequent cases by incrementing the number. I would also lift the veil on the identity of the respondent, the Attorney General of Canada, since it is clear from reading these reasons that this is a review of a decision of the Centre. The Centre's identity is not information protected by subsection 55(1). I order that these changes be effective immediately.

[13] No costs are awarded.

"J.D. Denis Pelletier"

J.A.

"I agree.

Johanne Gauthier J.A."

"I agree.

A.F. Scott J.A."

TRADUCTION

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

**APPEAL FROM A JUDGMENT OF THE FEDERAL COURT DATED JULY 18, 2014,
DOCKET NO. T-381-14.**

DOCKET: A-353-14

STYLE OF CAUSE: THE ATTORNEY GENERAL OF
CANADA and VIOLATOR No. 10

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: MARCH 16, 2015

REASONS FOR JUDGMENT BY: PELLETIER J.A.

CONCURRED IN BY: GAUTHIER J.A.
SCOTT J.A.

DATED: JUNE 30, 2015

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