

Date: 20090429

Docket: A-87-09

Citation: 2009 FCA 136

**CORAM: NADON J.A.
RYER J.A.
TRUDEL J.A.**

BETWEEN:

MINISTER OF FISHERIES AND OCEANS

Appellant

and

**ENVIRONMENTAL DEFENCE CANADA,
GEORGIA STRAIT ALLIANCE,
WESTERN CANADA WILDERNESS COMMITTEE
and DAVID SUZUKI FOUNDATION**

Respondents

Heard at Ottawa, Ontario, on April 29, 2009.

Judgment delivered from the Bench at Ottawa, Ontario, on April 29, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

NADON J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on April 29, 2009)

NADON J.A.

[1] Before us is an appeal of a decision of Madam Justice Layden-Stevenson, then a judge of the Federal Court, 2009 FC 131, dated February 10, 2009, which upheld a decision of Prothonotary Lafrenière, dated November 4, 2008, to the effect that the redacted portion of a memo dated July 18, 2007 to the Deputy Minister of Fisheries was not protected by solicitor-client privilege.

[2] We all agree that in light of the affidavit of Mr. Ahluwalia, filed in support of the Minister's assertion of privilege, it was entirely open to the Motions Judge, as it was to the Prothonotary, to conclude that the Minister had failed to meet the burden of establishing the existence of solicitor-client privilege.

[3] In view of this conclusion, we need not express a view with regard to the issue of waiver raised by the respondents, nor need we address the other grounds raised by the Minister in this appeal.

[4] Consequently, the appeal will be dismissed.

“M. Nadon”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-87-09

STYLE OF CAUSE:

MIN. OF FISHERIES AND
OCEANS v. ENVIRONMENTAL
DEFENCE CANADA ET AL.

PLACE OF HEARING:

Ottawa and Vancouver (via
videoconference)

DATE OF HEARING:

April 29, 2009

REASONS FOR JUDGMENT OF THE COURT BY:

Nadon, Ryer, Trudel JJ.A.

DELIVERED FROM THE BENCH BY:

NadonJ.A.

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FOR THE RESPONDENT

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