

Docket: 2017-5069(IT)G

BETWEEN:

EXXONMOBIL CANADA RESOURCES COMPANY,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Motion heard by Conference Call on August 10, 2023 at
Ottawa, Ontario

Before: The Honourable Justice Bruce Russell

Appearances:

Counsel for the Appellant: Jehad Haymour

Counsel for the Respondent: Wendy Bridges

ORDER

The Respondent's motion regarding aspects of the Appellant's solicitor-client privilege claim of the law firm letter referenced as "NEB - Recovery of Sponsor Costs Opinion" is allowed, with costs.

Further, in accordance with the herein Reasons for Order, it is ordered that the Appellant produce to the Respondent a redacted copy of the first page of the said law firm letter, redacted to show only:

- (a) the law firm letterhead;
- (b) the date of the letter;

- (c) name(s) and address(es) of the letter's addressee(s); and
- (d) the letter's "re" line (or comparable heading line).

Signed at Halifax, Nova Scotia, this 26th day of September 2023.

"B. Russell"

Russell J.

Citation: 2023 TCC 143
Date: 26092023
Docket: 2017-5069(IT)G

BETWEEN:

EXXONMOBIL CANADA RESOURCES COMPANY,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR ORDER

Russell J.

[1] The respondent's motion is for an Order requiring:

- (1) that the Appellant provide an explanation of its solicitor-client privilege claim respecting production of a letter from a law firm which letter was an email attachment identified as "NEB – Recovery of Sponsor Costs Opinion", with the explanation to be in sufficient detail to allow determination of the suitability of the privilege claim; and
- (2) that the Appellant produce such portions of the law firm letter that will allow the Respondent to determine the identity of the client.

[2] The said law firm letter was the attachment to an email dated March 30, 2001 from one M.G. Wheatley of Phillips Alaska Inc. to one Peter Lowry of Exxon Mobil Corporation (the parent of the herein Appellant).

[3] The Appellant has identified the law firm letter as being, "the legal opinion of Fraser Milner Casgrain LLP dated March 5, 2001 reflecting the advice provided to the parties of the Alaskan Gas Pipeline Project Agreement dated December 5, 2000."¹

¹ Appellant's submissions, para. 21

[4] Dealing first with the part of the motion seeking redacted production sufficient to allow identification of the “client”, the portion of the law firm letter that the Respondent seeks be produced is its first page, redacted to show the name(s) of the addressee(s) with also the law firm letterhead and the date of the letter.

[5] The Appellant opposes this, submitting that the Respondent should accept Appellant’s counsel’s word that the letter’s addressee was the ‘North American Natural Gas Pipeline Group’ [NANGPG].

[6] The Appellant has advised that NANGPG is the name taken on in or about March 1, 2001 by the parties to the Alaskan Gas Pipeline Project Agreement, dated December 5, 2000. Those parties are Exxon Mobil Corporation, BP Exploration (Alaska) Inc. and Phillips Alaska Inc.

[7] I do not concur with the Appellant. It is basic professional practice that a document be produced to an opposing party (redacted if/as required), rather than that the opposing party be obliged to accept counsel’s word as to the content of the document in lieu of its production. A lawyer ought not give evidence in a proceeding in which he/she appears. It is no slight to counsel’s professionalism that the opposing party wishes production of the actual document (redacted if/as required).

[8] I will allow the Respondent’s motion for an order that the Appellant produce a copy of the first page of the subject law firm letter, redacted to show the law firm letterhead, the date of the letter and all particulars as to the letter’s addressee(s), including name(s) and address(es), appearing on that page. None of these particulars is, itself, subject to solicitor-client privilege, nor has the Appellant so argued. These are the same particulars that counsel instead wishes to personally convey in substitution for production of the letter’s first page, suitably redacted.

[9] The second part of the Respondent’s motion is for an order that the Appellant provide an explanation of its solicitor-client privilege claim. The Respondent was not specific as to what it actually sought in this regard.

[10] In my view, clarification is in order as to the nature of the substantive content of the letter claimed as being subject to solicitor-client privilege. A basic description of the substantive content of the letter is required. Its description as an email attachment is hearsay, as distinguished from what any so-called “re” line (or comparable heading) of the letter should provide. That “re” line likely would be a

succinct description of the content of the letter provided by the author of the letter itself, without providing any privileged details.

[11] Accordingly, I will order that the disclosure of the first page of the law firm letter be redacted to show, in addition to as provided above, its “re” line (or comparable heading line).

[12] This conclusion is not a “determination as to suitability of the privilege claim” as expressed in my Amended Order dated January 31, 2023. That is for the Respondent to separately determine and/or address in the context of all information and documentation that it has, in addition to what is disclosed pursuant to this Order.

[13] The motion will be allowed, with costs.

Signed at Halifax, Nova Scotia, this 26th day of September 2023.

“B. Russell”

Russell J.

CITATION: 2023 TCC 143
COURT FILE NO.: 2017-5069(IT)G
STYLE OF CAUSE: EXXONMOBIL CANADA RESOURCES
COMPANY AND HIS MAJESTY THE
KING

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: August 10, 2023

REASONS FOR ORDER BY: The Honourable Justice Bruce Russell

DATE OF ORDER: September 26, 2023

APPEARANCES:

Counsel for the Appellant: Jehad Haymour

Counsel for the Respondent: Wendy Bridges

COUNSEL OF RECORD:

For the Appellant:

Name: Jehad Haymour

Firm: Bennett Jones LLP

For the Respondent:

Shalene Curtis-Micallef
Deputy Attorney General of Canada
Ottawa, Canada