

Federal Court of Appeal



Cour d'appel fédérale

Date: 20140319

Docket: A-288-13

Citation: 2014 FCA 74

**CORAM: BLAIS C.J.
GAUTHIER J.A.
MAINVILLE J.A.**

BETWEEN:

PAUL ABI-MANSOUR

Appellant

and

CANADIAN HUMAN RIGHTS COMMISSION

Respondent

Heard at Montréal, Quebec, on March 19, 2014.

Judgment delivered from the Bench at Montréal, Quebec, on March 19, 2014.

REASONS FOR JUDGMENT OF THE COURT BY:

GAUTHIER J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20140319

Docket: A-288-13

Citation: 2014 FCA 74

**CORAM: BLAIS C.J.
GAUTHIER J.A.
MAINVILLE J.A.**

BETWEEN:

PAUL ABI-MANSOUR

Appellant

and

CANADIAN HUMAN RIGHTS COMMISSION

Respondent

REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Montréal, Quebec, on March 19, 2014).

GAUTHIER J.A.

[1] Mr. Abi-Mansour (the appellant) appeals from the order of Mosley J. of the Federal Court, dated August 23, 2013 in file T-924-11, granting the motion of the Canadian Human Rights Commission (the Commission) and ordering the appellant to return to the Commission an inadvertently disclosed document protected by solicitor-client privilege.

[2] In an earlier proceeding in file T-924-11, Prothonotary Tabib concluded that this very document or communication was covered by solicitor-client privilege (Appeal Book, p. 57, para 3), a decision that was later upheld by Tremblay-Lamer J. of the Federal Court (Appeal Book, p. 62, para 2). Our Court in *Abi-Mansour v. Canada Revenue Agency*, 2013 FCA 27 (“*Abi-Mansour*”) (leave to appeal to the Supreme Court of Canada denied on July 11, 2013) confirmed the Federal Court decision. In *Abi-Mansour*, the Commission who by then had been made a party to the proceeding (at least in appeal) had filed a cross-appeal and was asking this Court to intervene and order the return of the said inadvertently disclosed document. Our Court noted that the Federal Court is master of its own procedure. Thus, as required by Tremblay-Lamer J., in order to obtain such an order, the Commission had to file a motion requesting the return of the privileged document. This is precisely what the Commission did before Mosley J.

[3] Whether or not the Commission should have formally sought to be joined as a party to the underlying judicial review proceedings in order to submit its motion to Mosley J., in the overall circumstances of these proceedings, no prejudice or injustice has resulted. It would be an abuse of the judicial process to overturn Mosley J.’s order on such procedural formalities.

[4] There is no question that the document is protected by solicitor-client privilege. The only issue is whether this privilege has been waived. Inadvertent disclosure of privileged documents does not automatically result in the waiver of privilege: *Chapelstone Developments Inc. v. Canada*, 2004 NBCA 96 at paragraph 55; *Stevens v. Canada*, [1998] F.C.J. No. 794 at paragraph 50 (F.C.A.). A case-by-case assessment must be made to determine whether the inadvertent disclosure resulted in a loss of privilege. At best, this is a question of mixed fact and law, reviewable on the standard of

palpable and overriding error. Having reviewed the record and the parties' submissions, and considering their oral argument, the appellant has not persuaded us that the judge erred in ordering the return of the document.

[5] In addition, it is difficult to understand why the appellant insists on keeping this document given that it cannot be used in the procedures in which he is involved. This Court in *Abi-Mansour* at paragraph 5 already stated that the redacted portions of this document could be of no use to support the appellant's allegations of wrongdoing. The same can be said about the unredacted parts.

[6] For these reasons, the appeal will be dismissed.

“Johanne Gauthier”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-288-13

**(APPEAL FROM AN ORDER OF MOSLEY J. OF THE FEDERAL COURT DATED
AUGUST 23, 2013, DOCKET NO. T-924-11)**

STYLE OF CAUSE: PAUL ABI-MANSOUR v.
CANADIAN HUMAN RIGHTS
COMMISSION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: MARCH 19, 2014

REASONS FOR JUDGMENT OF THE COURT BY: BLAIS C.J.
GAUTHIER J.A.
MAINVILLE J.A.

DELIVERED FROM THE BENCH BY:
GAUTHIER J.A.

APPEARANCES:

Paul Abi-Mansour ON HIS OWN BEHALF

Fiona Keith FOR THE RESPONDENT
Marion Van de Wetering

SOLICITORS OF RECORD:

Canadian Human Rights Commission FOR THE RESPONDENT
Litigation Services Division
Ottawa, Ontario