

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20161107**

**Docket: A-134-16**

**Citation: 2016 FCA 270**

**CORAM: DAWSON J.A.  
NEAR J.A.  
WOODS J.A.**

**BETWEEN:**

**876947 ONTARIO LIMITED O/A  
RPR ENVIRONMENTAL AND  
PATRICK WHITTY**

**Appellants**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Toronto, Ontario, on November 7, 2016.

Judgment delivered from the Bench at Toronto, Ontario, on November 7, 2016.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**DAWSON J.A.**

**Federal Court of Appeal**



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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Toronto, Ontario, on November 7, 2016).**

**DAWSON J.A.**

[1] The appellants appeal from the order of the Federal Court (2016 FC 432) which dismissed an appeal from an order of a prothonotary. The Prothonotary's order exempted from disclosure in the underlying application for judicial review any information that might

reasonably identify a person who applied for an investigation under section 17 of the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33 (Act).

[2] We are all of the view that this appeal should be dismissed with costs. We reach this conclusion substantially for the reasons given by the Federal Court Judge.

[3] Specifically, we reject the notion that the Federal Court effectively read the class privilege of section 16 into the scheme of sections 17 to 21 of the Act. We agree that in many situations someone who believes that an investigation should be initiated under section 17 of the Act may also require and request the protections afforded by section 16.

[4] As the Federal Court noted, this is what happened in the present case. The informant expressly sought protection under subsection 16(2) of the Act. The Regional Manager of Intelligence, Prairie and Northern Region with the Environmental Enforcement Directorate, Enforcement Branch, Environment Canada affirmed that he “had a strong impression from [the informer’s] words and manner that the [informer] was so concerned about his personal safety that if I did not agree to protect his identity and keep his involvement as informant secret and confidential that he would not assist us with the investigation.” Consistent with section 17 of the Act, the protection was limited in that if the investigation led to a prosecution the informant’s identity might necessarily be disclosed at trial.

[5] This finding is sufficient to dispose of this appeal.

[6] It follows that the appeal will be dismissed with costs.

“Eleanor R. Dawson”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-134-16

**STYLE OF CAUSE:** 876947 ONTARIO LIMITED O/A  
RPR ENVIRONMENTAL AND  
PATRICK WHITTY v.  
THE ATTORNEY GENERAL OF  
CANADA

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 7, 2016

**REASONS FOR JUDGMENT OF THE COURT BY:** DAWSON J.A.  
NEAR J.A.  
WOODS J.A.

**DELIVERED FROM THE BENCH BY:** DAWSON J.A.

**APPEARANCES:**

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Derek Edwards FOR THE RESPONDENT

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