

Date: 20081022

**Dockets: A-492-07
A-568-07**

Citation: 2008 FCA 321

**CORAM: SEXTON J.A.
EVANS J.A.
SHARLOW J.A.**

A-492-07

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

and

INFORMATION COMMISSIONER OF CANADA

Respondent

A-568-07

BETWEEN:

INFORMATION COMMISSIONER OF CANADA

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Ottawa, Ontario, on October 22, 2008.

Judgment delivered from the Bench at Ottawa, Ontario, on October 22, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

SHARLOW J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on October 22, 2008)

SHARLOW J.A.

[1] We have not been persuaded that the decision of Justice de Montigny discloses any error of law or any other error that warrants the intervention of this Court.

[2] The question of solicitor and client privilege seems to have arisen in this case only because the Attorney General objected to the February 16 order, which simply states that questions asked, answers given and exhibits referred to by the witness were not to be disclosed by counsel for the witness without the consent of the witness. There was no application for judicial review of the February 16 order.

[3] The application that underlies this appeal challenges the February 21 decision, which the Attorney General interprets as saying that if the witness gives consent to a disclosure by counsel as contemplated in the February 16 order, the consent must necessarily constitute a waiver of the witness' solicitor and client privilege. We do not accept that interpretation of the February 21 decision, in light of the February 16 order.

[4] This appeal will be dismissed with costs.

"K. Sharlow"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-492-07

STYLE OF CAUSE: Attorney General of Canada v.
Information Commissioner of Canada

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: October 22, 2008

REASONS FOR JUDGMENT OF THE COURT BY: (SEXTON, EVANS, SHARLOW
J.J.A.)

DELIVERED FROM THE BENCH BY: SHARLOW J.A.

APPEARANCES:

Christopher Rupar FOR THE APPELLANT

Daniel Brunet FOR THE RESPONDENT

Diane Therrien

SOLICITORS OF RECORD:

John H. Sims, Q.C. FOR THE APPELLANT
Attorney General of Canada

Information Commissioner of Canada FOR THE RESPONDENT
Ottawa, Ontario

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Attorney General of Canada

FOR THE APPELLANT

Information Commissioner of Canada
Ottawa, Ontario

FOR THE RESPONDENT