

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20100412

Docket: A-175-09

Citation: 2010 FCA 94

**CORAM: NOËL J.A.
EVANS J.A.
DAWSON J.A.**

BETWEEN:

JAVIER M. BANUELOS

Appellant

and

CASSELS BROCK & BLACKWELL LLP

and

TD BANK FINANCIAL GROUP

Respondents

Heard at Toronto, Ontario, on April 12, 2010.

Judgment delivered from the Bench at Toronto, Ontario, on April 12, 2010.

REASONS FOR JUDGMENT OF THE COURT BY:

NOËL J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on April 12, 2010.)

NOËL J.A.

[1] This is an appeal from a decision of Hughes J. (the Federal Court Judge) dismissing the appeal by Mr. Banuelos (the appellant) from an order of Prothonotary Milczynski (the Prothonotary) removing Cassels Brock & Blackwell LLP (the law firm) as a respondent in the

application brought by the appellant pursuant to section 14 of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 (the Act).

[2] The Prothonotary found that, based on the relevant provisions of the Act, the only proper respondent to an application is the organization alleged to have committed the alleged breach. The allegations against law firm were not part of the appellant's complaint to the Privacy Commissioner, were not investigated and did not form part of the report under review (reasons of the Prothonotary, page 2). The Federal Court Judge confirmed the order of the Prothonotary without adding any reasons of his own.

[3] In support of his appeal, the appellant, who is acting on his own behalf, argues essentially that the word "complaint" under the Act should be given a broad interpretation. He submits that when regard is had to all the exchanges between himself and the Privacy Commissioner, his complaint should be construed as being directed against the law firm even though it was not named in the complaint.

[4] There are basic requirements governing complaints under the Act which must be respected. The first is that a complaint must identify the organization alleged to have breached the Act (subsection 11(1) of the Act). This requirement is fundamental as it triggers the Privacy Commissioner's obligation to notify the organization concerned, and provide it with the opportunity to respond (subsection 11(4) of the Act). It also circumscribes the scope of the report which the Commissioner is called upon to produce (subsection 13(1) of the Act).

[5] The record in this case confirms that, as found by the learned Prothonotary, the allegations against the law firm were not part of the complaint. The appellant was advised on two occasions – by letter dated July 17, 2007 and by letter received October 25, 2007 – that the complaint did not extend to the law firm. He was further advised on November 13, 2007 that his concerns vis-à-vis the law firm would be addressed through the current investigation.

[6] The appellant's letter of November 16, 2006 shows that he was aware that the complaint did not extend to the law firm and that the law firm was not being investigated. In this letter, the appellant states:

I wish to clarify that if your investigator determines that this disclosure was sought and/or accepted by this third party [i.e., the lawyer who was a member of the law firm and acting for his mother], then my complaint for the violation of my privacy under PIPEDA is to be made extensive to [law firm] and Diane E. Klubach L.L.B.

[7] The investigator made no such determination. In fact, the report shows that the lawyer in question was interviewed but that according to her recollection, the TD had not released any documents to her. At its best, the appellant's desire to lodge a complaint against the law firm was contingent on an event which never materialized.

[8] In the alternative, the appellant contends that because the lawyer in question was interviewed by the investigator, and because the interview is referred to in the report, the law firm should be named as the respondent pursuant to section 104 of the *Federal Courts Rules*, S.O.R. / 98-106.

[9] In our view, this does not suffice to make the law firm a proper or necessary party to the application within the meaning of that Rule.

[10] The appeal will be dismissed with costs.

"Marc Noël"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-175-09

**(APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE HUGHES,
DATED APRIL 7, 2009, DOCKET NO. T-1459-08)**

STYLE OF CAUSE: JAVIER M. BANUELOS v.
CASSELS BROCK &
BLACKWELL LLP and TD BANK
FINANCIAL GROUP

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 12, 2010

REASONS FOR JUDGMENT OF THE COURT BY: NOËL, EVANS & DAWSON JJ.A.

DELIVERED FROM THE BENCH BY: NOËL J.A.

APPEARANCES:

Javier M. Banuelos

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(SELF-REPRESENTED)

Susan M. Chapman

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CASSELS BROCK

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