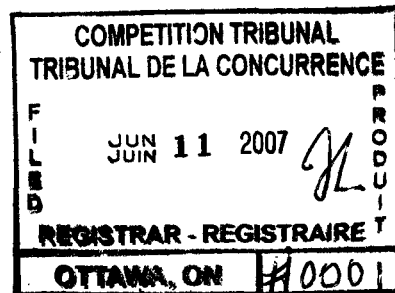


File no. CT-2007-07

APPLICATION FOR LEAVE TO MAKE AN APPLICATION

Competition Tribunal



BETWEEN:

ROBERT GILLES GAUTHIER
cob as THE NATIONAL CAPITAL NEWS CANADA

Applicant

- AND -

THE HONOURABLE PETER MILLIKEN, M.P.
SPEAKER OF THE HOUSE OF COMMONS

Respondent

1. This is a renewed application to the Competition Tribunal pursuant to Section 103.1 seeking leave to make an application under section 75 and under section 77 of the *Competition Act*. An earlier Leave Application, CT-2002-005, No. 1001, was denied in an Order of the *Competition Tribunal* dated the 13th day of December, 2002 and signed by the Hon. Madame Justice Eleanor R. Dawson.

At Paragraph 26 of the Reasons, Justice Dawson wrote, in part: “I am satisfied that the Speaker’s alleged refusal to grant to the applicant full access to the Parliamentary Press Gallery ... is an exercise of the parliamentary privilege...,” and at Paragraph 28, in

part: “I conclude that the Tribunal is without jurisdiction...,” and,
further, at Paragraph 29, in part: “the practice complained of
could not be the subject of any order of the Tribunal...”

**AS GROUNDS FOR THIS RENEWED
REQUEST, the Applicant relies on:**

DATE: 20050520
DOCKET: 29564

SUPREME COURT OF CANADA, CITATION:
Canada (House of Commons) v. Vaid, [2005] 1 S.C.R.
667, 2005 SCC 30

BETWEEN:

House of Commons and the Honourable Gilbert Parent
Appellants

v.

Satnam Vaid and Canadian Human Rights Commission
Respondents

- and -

Attorney General of Canada, the Honourable Senator Serge
Joyal, the Honourable Senator Mobina S.B. Jaffer, Canadian
Association of Professional Employees, Communication,
Energy and Paperworkers Union of Canada and Speaker
of the Legislative Assembly of Ontario
Intervenors

CORAM: McLachlin C.J. and Major, Bastarache, Binnie, LeBel, Deschamps, Fish,
Abella and Charron JJ.

REASONS FOR JUDGMENT:
(paras. 1 to 101)

Binnie J. (McLachlin C.J. and Major, Bastarache, LeBel,
Deschamps, Fish, Charron and Abella JJ. concurring)

Paragraph 101

The appeal is allowed without costs. The constitutional question is answered as follows:

Q. Is the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, constitutionally inapplicable as a consequence of parliamentary privilege to the House of Commons and its members with respect to parliamentary employment matters?

A. Given the broad terms in which this question is put, the answer is no. The definition of a more limited category of privilege, and the extent to which it may provide immunity from the *Canadian Human Rights Act*, if at all, must await a case in which the question truly arises for a decision.

Q. In the present case, paraphrasing the Question of the Supreme Court of Canada: Are the *Competition Tribunal Act* and the *Competition Act* constitutionally inapplicable as a consequence of parliamentary privilege to the House of Commons and its members with respect to access to the Parliamentary Press Gallery and ancillary commercial and networking facilities and services?

A. The definition of a more limited category of privilege, in this instance, a full and equal competitive access for journalists with *The National Capital News Canada* as is enjoyed by the Applicant's competitors to the House of Commons press gallery facilities is a case in which this question truly arises for a decision and the extent to which it may, if at all, provide immunity from the *Competition Tribunal Act* and the

Competition Act.

AND, AS FURTHER GROUNDS FOR THIS RENEWED REQUEST,

The Applicant relies on *Federal Court* case T-653-02, before Mosley J., *Privacy Act* in relation to solicitor-client privilege.

Robert Gilles Gauthier and National Capital News v. Minister of Justice and Privacy Commissioner of Canada, indexed as: Gauthier v. Canada (Minister of Justice)

Issues:

What is the appropriate standard of review with respect to a decision to exempt documents under the s. 27 *PA* exemption for solicitor-client privilege?

Did the Minister's delegate err in determining that the records in question were exempt from disclosure to the applicant due to solicitor-client privilege under s. 27 *PA*?

Reasons:

The appropriate standard of review here is correctness, based on an assessment of the factors under the pragmatic and functional approach.

... the decision-maker, the Director of the ATIP Office, does not have a greater amount of expertise relative to the Court on the issue of whether documents are subject to solicitor-client privilege, a matter clearly within the particular expertise of the Court. Further ... the government institution is regarded as having lesser expertise regarding legal questions in comparison to the Court. Further, while the s. 27 exemption has an element of discretion in determining whether a document found to be solicitor-client privileged may nonetheless be disclosed, the determination of whether the document is so privileged is not discretionary.

The purpose of s. 27 must be regarded as fundamental to our society. Shielding information developed in the solicitor-client relationship from disclosure is a central underpinning within the administration of justice and the functioning of the rule of law. The balancing of these interest points to a less deferential standard of review, in that an independent review by the court will be required when such important interests are at stake.

The question at issue is one of mixed fact and law, here, the question concerns the application of the legal definition of solicitor-client privilege to the information in dispute.

As the term "solicitor-client privilege" as used in s. 27 is not defined in the *PA*, common law principles recognizing the term as a fundamental

and substantive rule of law in Canada are applicable.

The Court concluded that certain pages that had been withheld were not exempt as they did not contain solicitor-client privileged information.

2. An Order will be sought (a) that the practices complained of could be the subject of an order of the Competition Tribunal under Sections 75 and 77 of the Act and (b) to consider if the evidence does meet the test for leave to make an application.

GROUND AND MATERIAL FACTS

3. The applicant has been substantially affected in his business and is significantly precluded from carrying on business due to his inability to obtain full access to substantial supplies of information and to essential services (including a listing on the Press Gallery journalist list), that are provided to his competitors by the Speaker of the House of Commons, the Honourable Peter Milliken who controls such access on behalf of the House of Commons and the Senate of Canada.

4. The applicant is unable to obtain access to complete news and information as a result of the absence of a listing in the Press Gallery and is denied the networking opportunities essential in making necessary contacts by the failure to be recognized as an accredited journalist by the Speaker of the House of Commons, the Honourable Peter Milliken.
5. The applicant launched his newspaper, *The National Capital News*, in 1982, built it up at great expense and work, to a weekly publication in 1988, willing and able, and meeting and surpassing the usual trade terms and all other requirements for accreditation by the Speaker of the House of Commons.
6. The facilities and services provided by the House of Commons at public expense are in ample supply as other journalists are provided access while the applicant, with equal or greater qualifications is denied access and supply of information and essential networking opportunities. The applicant, among other important services particularly important for newspapers, is denied access to the research services and material of the Library of Parliament while his competitors benefit from these essential, substantial reporting and financial competitive advantages in an industry in the billions of dollars annually.
7. Access to the publicly-funded Press Gallery is provided to numerous foreign and state-subsidized publishing corporations while the applicant, a Canadian entrepreneur with no government subsidies, is denied the protection of the provisions of fair competition of the *Competition Act*.

8. These restrictive trade practices by the respondent against the applicant, continue to prevent the applicant from building his publications in the market. It is essential that a newspaper that carries a section on politics be provided equal and full access to the same sources of news, information and contacts enjoyed by the competition.

ORDER SOUGHT

9. Parliamentary privilege does not excuse the respondent from compliance with the Law and with rulings and orders of the Courts and other recognized Canadian and international Tribunals. Law makers should not be law breakers.
10. The order sought, pursuant to Section 75(1), (2) and (3) of the *Competition Act*, Restrictive Trade Practices, Refusal to Deal, is that full access to the Press Gallery facilities and services, including mailbox, listing and other benefits, be provided immediately to the applicant and his employees and associates without further delay without the requirement of becoming a member of a private corporation called Canadian Parliamentary Press Gallery Inc., or being required to meet unfair or arbitrarily restrictive conditions of any other person, group or government official.
11. The Fundamental Right of Freedom of Expression, defined as the right to seek, receive and impart information without interference, is guaranteed in the Canadian Constitution and this without any conditions or other anti-competitive interference from individuals, private corporations or from the Parliament and Government of Canada and their employees or elected representatives.

LANGUAGE AND FORMAT OF PROCEEDINGS

12. It is submitted that these proceedings proceed on paper in English.



Robert Gilles Gauthier
Proprietor/Publisher
The National Capital News Canada
RPO 71035 - 181 Bank Street
Ottawa, Ontario K2P 2L9

natcapnewscanada@aol.ca

(613) 232-6397

Acting on his own behalf

TO: Hon. Peter Milliken, M.P. for Kingston and the Islands,
Speaker of the House of Commons and
Chairman of the Board of Internal Economy,
Room 309-S, Centre Block,
Parliament Buildings, Ottawa K1A 0A6

Tel: (613) 992-5042

Fax: (613) 947-2816

TO: Commissioner of Competition,
Industry Canada,
50 Victoria Street,
Gatineau, Québec K1A 0C9

Tel: (819) 997-3301

TO: The Registrar
The Competition Tribunal,
Royal Bank Centre,
600 - 90 Sparks Street,
Ottawa, Ontario K1P 5B4