

Case Law Update: Globe and Mail v. Canada (Attorney General)

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By Mark Edelstein

Privilege Journalist-Source Privilege Publication Bans

This decision dealt with objections raised by the Globe and Mail to orders that would have required it to reveal a journalist's confidential source. The source provided information regarding the "Sponsorship Scandal" sought by a party in a civil action that arose out of the Scandal.

The Court affirmed the existence of journalist-source privilege. The applicability of the privilege to a given relationship is to be determined by the Wigmore test. The Court specifically affirmed that Wigmore could be applied under Quebec's Civil Code. The Court held that civil procedure in Quebec is not completely detached from the common law model and common law principles may play a "residual role."

The Court provided guidance in applying the Wigmore test in this context. Questions regarding a source must be relevant. The Court noted that the fourth stage of Wigmore, which involves considering if the benefit of revealing the evidence outweighs the harm of disclosure, is the most significant aspect of the test. Key factors to consider in this assessment include the stage of the proceedings, the centrality of the issue in dispute, the relationship of the journalist to the proceedings and other available sources of the information. The decision, however, is ultimately a contextual one. Whether the privilege applied to the journalist-source relationship at issue was remitted back to the Quebec Superior Court.

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