

# SUPREME COURT OF YUKON

Citation: *Freedom TV Inc. v. Holland*, 2016 YKSC 24

Date: 20160509  
S.C. No. 14-A0024  
Registry: Whitehorse

Between:

FREEDOM TV INC., MASTERWORKS 2011 TV INC., AARON GOLDMAN

Plaintiffs

And

JIM HOLLAND, GREEN NEEDLE RECORDS, SEAWEED STUDIOS,  
CHRIS RODGERS, AVCR VIDEO PRODUCTION

Defendants

Before Mr. Justice R.S. Veale

Appearances:  
Aaron Goldman  
Lenore Morris

Representing himself and Freedom TV Inc.  
Counsel for the Defendants

## REASONS FOR JUDGMENT (Litigation Privilege)

### INTRODUCTION

[1] On April 20, 2016, Mr. Goldman applied for production of three separate communications by Mr. Holland for which Mr. Holland claims litigation privilege. Both parties agree to the Court inspecting the documents pursuant to Rule 25(15) to determine the validity of the claim of litigation privilege.

[2] On April 20, 2016, I ordered counsel for Mr. Holland to file a letter attaching the communications for my review. The clerk was directed to place the letter in a sealed envelope.

[3] For the reasons that follow, I find that all three of the communications are subject to litigation privilege and do not need to be produced by Mr. Holland.

## **BACKGROUND**

[4] In this court action, Mr. Goldman asserts, among other claims, a claim of defamation and interference with contractual relations against Mr. Holland arising out of a November 2013 contract in which Mr. Goldman hired Mr. Holland to record musical performances during the 2013 Blue Feather Music Festival in Whitehorse, Yukon.

[5] Mr. Goldman commenced this court action on May 23, 2014. In December 2015, Mr. Holland was contemplating an application for security for costs. While that application has not been argued, I understand the basis for it to include the fact that Mr. Goldman resides in Manitoba, that he has ongoing litigation in Manitoba and Ontario, and that he is subject to at least one outstanding judgment in Ontario, which may or may not be under appeal.

[6] Mr. Holland was not formally represented by a lawyer in this court action in December 2015. His lawyer filed an appearance on January 11, 2016.

[7] The three communications set out in Schedule B of Mr. Holland's Affidavit of Documents filed December 31, 2015, for which litigation privilege is claimed, are email communications by Mr. Holland with potential witnesses:

1. Ross McFadyen on December 14, 2015;
2. Catherine Francis on December 14, 2015; and
3. Karen Fox on December 14 and 22, 2015.

[8] Mr. Goldman and Mr. Holland are aware that Ross McFadyen is a Manitoba lawyer who acted as agent for the Royal Bank of Canada in a court action against Mr. Goldman.

[9] Catherine Francis is a lawyer in Ontario who is being sued personally by Mr. Goldman.

[10] Karen Fox is a law clerk with Catherine Francis' law firm.

[11] Mr. Goldman's concern is that there is some "cross-contamination" occurring between his Yukon, Manitoba and Ontario lawsuits. Specifically, his concern is that there may be communication between Mr. Holland and the three individuals that continues to defame him and interfere with his contractual relations and that would be relevant to this court action.

[12] I have reviewed the email communications and confirm that there is nothing of that sort in the communications which are solely related to factual issues that may relate to a security for costs application. Mr. Goldman expressly stated that he does not take issue with the claim for litigation privilege if Mr. Holland was engaged in litigation preparation. Mr. Goldman does object if Mr. Holland is hiding behind a claim for litigation privilege if it is simply a ruse or shield to avoid disclosure of ongoing defamation and contractual interference. I confirm that this is not the case in these email communications.

## **DISPOSITION**

[13] The difference between solicitor-client privilege and litigation privilege is explained by Sharpe R.J. (now J.A.), in his article entitled "Claiming Privilege in the Discovery Process", in *Law in Transition: Evidence*, [1984] Special Lectures L.S.U.C.

163, at pp. 163-165. Litigation privilege applies to communications of a non-confidential nature between the solicitor and third parties and even includes material of a non-communicative nature. Litigation privilege provides “a zone of privacy” during the pending or apprehended litigation. It protects the process of litigation to facilitate adversarial investigation and preparation.

[14] Mr. Goldman submitted that Mr. Holland is not entitled to litigation privilege because he is not counsel and he did not have legal counsel until January 11, 2016. I am not sure that Mr. Goldman was advocating this submission vigorously because a ruling that self-represented litigants do not have litigation privilege might have a negative impact on his disclosure. However, in my view, it is clear that self-represented litigants should have the same litigation privilege. Litigation privilege belongs to the party in the lawsuit. See *Blank v. Canada (Minister of Justice)*, 2006 SCC 39.

[15] Mr. Goldman also submitted that Mr. Holland waived his litigation privilege in the following paragraphs of his Affidavit #3, filed January 29, 2016:

35. Long after the Festival I learned that at the time of the Festival, Goldman was almost certainly insolvent. On November 29, 2013 an Ontario Superior Court of Justice appointed a receiver to receive the assets of two of Goldman’s companies, FTVRB2 Inc. and FTVRTZ Inc. An excerpt of that Order is attached as Exhibit C to the Affidavit of Chris Rodgers #2.
36. On December 11, 2013 in the same lawsuit, the Ontario Superior Court of Justice awarded the Royal Bank of Canada (“RBC”) a \$1,260,600.74 judgment against Goldman personally. Goldman was also ordered to pay RBC costs. A copy of that Judgment is attached as Exhibit D to the Affidavit of Chris Rodgers #2.
37. I have been told by one of the lawyers for RBC, who did not wish to be named, that during Goldman’s case

against RBC, Goldman sued her in her personal capacity.

38. In 2015, the Ontario Superior Court of Justice dismissed a claim by Goldman against the Bank of Montreal (“BMO”) for \$25 million. In the court’s decision, the judge stated that Goldman was “tilting at windmills.” The judge awarded BMO \$30,000 for costs. This case was filed in this action on January 11, 2016.
39. In his case against BMO, Goldman alleged he was incapacitated, the same as he has in our lawsuit. The judge rejected this claim but stated that cognitive issues “may blind [Goldman] to the vexatiousness of his litigation.”

[16] While Mr. Goldman focussed his submissions on paragraph 36, all of the above relate to the information obtained by Mr. Holland in his email communication for which he claims litigation privilege. I do not cite those paragraphs for their truth, but simply to provide the context to this application.

[17] Mr. Goldman relied on the following case law to support his submission: *Fuller v. Schaff*, 2009 YKSC 22, at para. 28; *Blank v. Canada (Minister of Justice)*, cited above, at paras. 44, 45 and 60; *Ross River Dena Council v. Canada (Attorney General)*, 2009 YKSC 70, at paras. 11 – 14 and *Sturzenegger (c.o.b. Zurich Trucking) v. Peters Industries Northern Ltd.*, 2003 YKSC 72, at paras. 8 – 21.

[18] I do not consider it necessary to comment on and distinguish each case as Mr. Goldman indicated he was really concerned about communications rather than the documents which were all a matter of public record. In fact, Mr. Goldman is privy to all the matters in Mr. Holland’s Affidavit #3, paras. 35 – 39. He may take issue with the allegations but there is no basis to deny the claim of litigation privilege.

**CONCLUSION**

[19] I conclude that there is no express or implied waiver or a fairness issue that would compel the production of the email communications of Mr. Holland and the three potential witnesses. I confirm that there is nothing contained within them that is defamatory or that could interfere with contractual relations.

[20] Mr. Goldman's application to order production of the email communication is dismissed. Counsel and Mr. Goldman may speak to costs in the case management set for June 13, 2016, at 9 a.m.

---

VEALE J.