Federal Court Cour fédérale

Date: 20221102

Docket: T-230-22

Citation: 2022 FC 1497

Ottawa, Ontario, November 2, 2022

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

SADEQ AL-HUSSEINI

Applicant

and

ALTAIF INC., also know as, ALTAIF FOREIGN EXCHANGE SIMPLIFIED

Respondent

JUDGEMENT AND REASONS

[1] This application is brought pursuant to s 14 of the *Personal Information Protection Electronic and Documents Act*, SC 2000 c5 [*PIPEDA*]. Sadeq Al-Husseini [Applicant] claims that his privacy rights were breached by Altaif Inc. [Respondent or Altaif]. The Applicant seeks a declaration to that effect and damages in the amount of $20,000.

Background

[2] On September 15, 2020, in relation to a divorce proceeding between the Applicant and his ex-wife, Justice Howard of the Ontario Superior Court of Justice, Family Court issued an Order addressing various matters, including the sale and the division of the sale proceeds of the matrimonial home, interim child support and, most significantly for purposes of this application, that:

> There shall be an order for the production of third party records relating to the Respondent father's [the Applicant herein] transfer of funds through BABYLON MONETARY SERVICES INC. and ALTAIF CURRENCY EXCHANGE, conducted in the name of SADEQ JAAFAR HUSSEIN AL-HUSSEINI or SADIK JAAFAR HUSSAIN AL-HUSSAINI or SADEQ IAAFAR AL-HUSSEINI or [non-English characters] or 238l431Ontario Inc. carrying on business as Al Shark or 1849601 Ontario Inc. carrying on business as Jeff's Brothers such production to be made within 60 days to counsel for the Applicant, who shall forthwith provide a copy of any produced records to counsel for the Respondent.

[Production Order]

[3] In that regard, on December 14, 2020, the Respondent, a business offering foreign exchange and money transfer services, received a letter from Mr. Zane Handysides, counsel for the Applicant's ex-wife in the divorce proceedings. This letter attached the Production Order and advised that the Respondent was required by the Production Order "to produce all of your records related to any transfer of funds (whether by forwarding or receiving) conducted in the name of any or all of" the listed persons or entities.

[4] By letter dated January 7, 2021, in response to the Production Order, the Respondent advised that none of the listed names had conducted any money transfers (sending or receiving) via Alaif Inc. (currency exchange and money transfer) "[h]owever 'SADWQ JAAFAR HUSSEIN AL-HUSSEINI' has conducted (4) Foreign exchange operations with Altaif Inc. Windsor branch between the years 2016-2017". The Respondent produced records pertaining to the USD foreign exchange that the Applicant purchased from Altaif during that period, which records were attached to its responding letter [Records].

[5] The Applicant alleges that the disclosure of the Records was in breach of his right to privacy under *PIPEDA* because it included information, namely records of currency exchange transactions, that fell outside the scope of the Production Order which only required a disclosure of transfers of funds. According to the Applicant's written submissions, the Records "are now out of the bag, and being used against the Applicant in the family law proceedings that he has with his ex-wife".

[6] By letter dated February 19, 2021, counsel for the Applicant sent a letter to the Respondent asserting that the Respondent had committed a breach of privacy under *PIPEDA* and had also failed to identify the breach. The letter sought $20,000 compensation for damages and advised that if a response was not received within two weeks, then a formal compliant would be made to the Privacy Commissioner.

[7] The Applicant subsequently filed a complaint with the Office of the Privacy Commissioner of Canada [OPCC]. Based on its assessment of the facts, the OPCC ultimately

concluded that the personal information disclosed by the Respondent was provided pursuant to a valid court order and, therefore, there was no breach of *PIPEDA*. It accordingly closed its file on the basis that the complaint was not well-founded.

[8] The Applicant has brought this application pursuant to s 14 of *PIPEDA* and seeks a declaration that the Respondent breached his privacy rights under *PIPEDA* and, pursuant to s 16, damages in the amount of $20,000, as well as costs.

Relevant Legislation

Personal Information Protection and Electronic Documents Act, SC 2000, c 5

> DIVISION 1 - Protection of Personal Information
>
> Compliance with obligations
>
> > 5 (1) Subject to sections 6 to 9, every organization shall comply with the obligations set out in Schedule 1.
> >
> > …
>
> Disclosure without knowledge or consent
>
> > (3) For the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization may disclose personal information without the knowledge or consent of the individual only if the disclosure is
> >
> > ….
> >
> > > (c) required to comply with a subpoena or warrant issued or an order made by a court, person or body with jurisdiction to compel the production of information, or to comply with rules of court relating to the production of records;
> >
> > ….
>
> DIVISION 2 - Remedies
>
> Hearing by Court

Application

14 (1) A complainant may, after receiving the Commissioner's report or being notified under subsection 12.2(3) that the investigation of the complaint has been discontinued, apply to the Court for a hearing in respect of any matter in respect of which the complaint was made, or that is referred to in the Commissioner's report, and that is referred to in clause 4.1.3, 4.2, 4.3.3, 4.4, 4.6, 4.7 or 4.8 of Schedule 1, in clause 4.3, 4.5 or 4.9 of that Schedule as modified or clarified by Division 1 or 1.1, in subsection 5(3) or 8(6) or (7), in section 10 or in Division 1.1.

….

Remedies

16 The Court may, in addition to any other remedies it may give,

> (a) order an organization to correct its practices in order to comply with Divisions 1 and 1.1;
>
> (b) order an organization to publish a notice of any action taken or proposed to be taken to correct its practices, whether or not ordered to correct them under paragraph (a); and
>
> **(c)** award damages to the complainant, including damages for any humiliation that the complainant has suffered.

Summary hearings

17 (1) An application made under section 14 or 15 shall be heard and determined without delay and in a summary way unless the Court considers it inappropriate to do so.

….

SCHEDULE 1 Principles Set out in the National Standard of Canada Entitled Model Code for the Protection of Personal Information, CAN/CSA-Q830-96

4.3 Principle 3 – Consent

The knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where inappropriate.

Note: In certain circumstances personal information can be collected, used, or disclosed without the knowledge and consent of the individual. For example, legal, medical, or security reasons may make it impossible or impractical to seek consent. When information is being collected for the detection and prevention of fraud or for law enforcement, seeking the consent of the individual might defeat the purpose of collecting the information. Seeking consent may be impossible or inappropriate when the individual is a minor, seriously ill, or mentally incapacitated. In addition, organizations that do not have a direct relationship with the individual may not always be able to seek consent. For example, seeking consent may be impractical for a charity or a direct-marketing firm that wishes to acquire a mailing list from another organization. In such cases, the organization providing the list would be expected to obtain consent before disclosing personal information.

4.3.1

Consent is required for the collection of personal information and the subsequent use or disclosure of this information. Typically, an organization will seek consent for the use or disclosure of the information at the time of collection. In certain circumstances, consent with respect to use or disclosure may be sought after the information has been collected but before use (for example, when an organization wants to use information for a purpose not previously identified).

4.3.2

The principle requires “knowledge and consent”. Organizations shall make a reasonable effort to ensure that the individual is advised of the purposes for which the information will be used. To make the consent meaningful, the purposes must be stated in such a manner that the individual can reasonably understand how the information will be used or disclosed.

….

4.5 Principle 5 —Limiting Use, Disclosure, and Retention

Personal information shall not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual or as required by law. Personal information shall be retained only as long as necessary for the fulfilment of those purposes.

….

> 4.6 Principle 6 — Accuracy
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> Personal information shall be as accurate, complete, and up-to-date as is necessary for the purposes for which it is to be used.
>
> ….
>
> 4.7 Principle 7 — Safeguards
>
> Personal information shall be protected by security safeguards appropriate to the sensitivity of the information.
>
> 4.7.1
>
> The security safeguards shall protect personal information against loss or theft, as well as unauthorized access, disclosure, copying, use, or modification. Organizations shall protect personal information regardless of the format in which it is held.

Issues

[9] The determinative issue in this matter is whether the disclosure of the Records by the Respondent breached the Applicant's *PIPEDA* privacy rights.

[10] When appearing before me, counsel for the Respondent raised a preliminary matter being that the evening before the hearing counsel for the Applicant had sent him a new book of authorities upon which Applicant's counsel intended to rely at the hearing. Counsel for the Respondent submitted that this prejudiced his client, as his counsel had not had the opportunity to review the new authorities or prepare a response to them. However, he was prepared to proceed, submitting that the late filing be addressed by costs. I note that the Applicant had not provided the Court with the new book of authorities at the time of the hearing. This was subsequently provided.

Was there a breach of the Applicant's *PIPEDA* privacy rights?

Applicant's Position

[11] The Applicant submits that the Respondent has breached its privacy obligations by producing information that was outside of the scope of the Production Order. Specifically, the Applicant submits that the Production Order required disclosure of transfers of funds, but that the Respondent provided Statements of Accounts from January 1, 2013 to December 31, 2020, including currency conversions. The Applicant asserts that the currency conversion transactions were not transfers and did not transfer the funds to any other person. He submits that the currency conversions do not fall within the scope of "transfer of funds" as set out in the Production Order. The Applicant further submits that the Respondent did not answer the Production Order, but instead answered the letter of Mr. Handysides, which the Applicant submits was more expansive than the Production Order.

Respondent's Position

[12] The Respondent submits that the information it disclosed constituted "transfers of funds" and therefore was within the scope of the Production Order and was not a breach of the Applicant's privacy rights. The Respondent submits that the Records demonstrate that the Applicant used Altaif to transfer funds between his Canadian and US accounts. For example, on September 2, 2016, the Applicant deposited a bank draft from RBC in the amount of $26,140 into his Canadian account at Altaif. He then exchanged this into $20,000 USD and transferred the $20,000 USD into his Altaif USD account. On September 8, 2016, after the hold on the bank

draft had cleared, the Applicant withdrew the $20,000 USD from his USD account. The Respondent submits that the act of depositing cheques from RBC, TD or BMO into the Applicant's Canadian Altaif account is a method of transferring funds from those banks into the Applicant's Altaif Canadian account, as are the acts of debiting his Altaif Canadian account and crediting his Altaif US account and the withdrawing of the US dollars from the Altaif US account.

Analysis

[13] In *Miglialo v Royal Band of Canada*, 2018 FC 525 [*Miglialo*] this Court describes its role in determining a s 14 *PIPEDA* application and the burden of proof of an applicant:

> [21] An application under section 14 of PIPEDA is not a judicial review of the Commissioner's Report, but the Report may be entered into evidence as was the case here. The scope of the application is prescribed by law. The Court is limited to the matters in respect of which the complaint about the violation of principles was made or that are referred to in the Commissioner's Report. Although the application is said to be a de novo action, it must be dealt with in a summary manner. The Court is engaged in a fact-finding process to determine whether the respondent violated one or more of the principles (*Randall v Nubodys Fitness Centres*, 2010 FC 681 [*Randall*]). Once a violation has been established, the Court has discretion under section 16 of PIPEDA to award damages on a principled basis that will be appropriate and just in the circumstances (*Nammo v TransUnion of Canada Inc.*, 2010 FC 1284 [*Nammo*]). The burden of proof rests on the applicant.
>
> [22] That means in the circumstances of this case that the applicant must establish the damages suffered and that they were caused by the violation (*Biron v RBC Royal Bank*, 2012 FC 1095 [*Biron*], at para 38). Here, the applicant claims that there was an unauthorized use of her financial information and that there was disclosure of that information. As for the use, it is not contested by RBC that there was one such occurrence, on February 24, 2013. Thus, the applicant must show that there was disclosure of her information if she is to prevail on that front. It will also be for the applicant to

> satisfy the Court of the damages she claims she suffered as a result of the violation.
>
> [23] The applicant not only has the burden of proof, but she must also satisfy the standard of proof which is, in all civil matters, the balance of probabilities (*F.H. v McDougall*, 2008 SCC 53; [2008] 3 SCR 41, at para 40). As the McDougall Court, as well as the Court in *Canada (Attorney General) v Fairmont Hotels Inc*., 2016 SCC 56; [2016] 2 SCR 720, at para 36, found the "evidence must always be sufficiently clear, convincing and cogent". I am afraid the evidence of that quality was dearly missing in this case.

[14] In this matter, there is no OICC Report as the Applicant's complaint was found not to be well-founded in light of the valid Production Order.

[15] In that regard, s 7(3)(c) of *PIPEDA* provides that an organization may disclose personal information without the knowledge or consent of the individual, if the disclosure is required to comply with an order made by a court with jurisdiction to compel the production of information.

[16] In essence, this matter boils down to what constitutes a "transfer of funds" as set out in the Production Order and whether it is limited to transfers between individuals or whether it includes transfers between various accounts held by one individual.

[17] The case law on the interpretation of Court orders is of limited utility in these circumstances. In *Campbell v Campbell,* 2016 SKCA 39 [*Campbell*], the Saskatchewan Court of Appeal summarized the principles regarding the interpretation of court orders:

> 15 These principles have been set forth in a number of cases. In *Sutherland v. Reeves*, 2014 BCCA 222, 61 B.C.L.R. (5th) 308 (B.C. C.A.), Bauman C.J.B.C. stated:

> [31] First, court orders are not interpreted in a vacuum. This Court has recently described the correct approach to the interpretation of court orders (*Yu v. Jordan*, 2012 BCCA 367 at para. 53, Smith J.A.):
>
> > [53] In my view, the interpretation of a court order is not governed by the subjective views of one or more of the parties as to its meaning after the order is made. Rather an order, whether by consent or awarded in an adjudicated disposition, is a decision of the court. As such, it is the court, not the parties, that determines the meaning of its order. In my view, the correct approach to interpreting the provisions of a court order is to examine the pleadings of the action in which it is made, the language of the order itself, and the circumstances in which the order was granted.
>
> [Emphasis added.]
>
> As a result, in addition to examining the language of the Order, it is necessary to review the pleadings and surrounding circumstances. It would be an error to have regard to those factors but to then interpret a generic Model Order instead of the specific order Mr. Justice Willcock made in response to the pleadings and the surrounding circumstances before him.

[18] These principles have been applied by Courts in various jurisdictions (see e.g. *Weinrich Contracting Ltd v Wiebe*, 2022 ABCA 176 at para 25; *Garnier v Garnier*, 2021 NSSC 116 at para 23-25; *S(I) v B(D)*, 2016 NBQB 167 at para 189).

[19] Here, however, it was not the Federal Court that issued the Production Order, but rather the Ontario Superior Court of Justice, Family Court. This Court also does not have the benefit of having the pleadings of the underlying family law proceeding before it. As such, this Court is limited to examining the language of the Production Order itself and the surrounding general

circumstances in which the Production Order was granted (*Campbell* at para 15 citing *Sutherland v Reeves*, 2014 BCCA 222 at para 31 [*Sutherland*]).

[20] As indicated above, the language of the Production Order required "the production of third party records relating to the Respondent father's transfer of funds through BABYLON MONETARY SERVICES INC. and ALTAIF CURRENCY EXCHANGE, conducted in the name of SADEQ JAAFAR HUSSEIN AL-HUSSEINI or SADIK JAAFAR HUSSAIN AL-HUSSAINI or SADEQ IAAFAR AL-HUSSEINI or [non-English characters] or 238l431 Ontario Inc. carrying on business as Al Shark or 1849601 Ontario Inc. carrying on business as Jeff's Brothers such production" (emphasis added).

[21] The Applicant relies on *Riverin v R*, [1995] TCJ No 1675 at para 9 [*Riverin*] to submit that "a person makes a transfer of property to another person if he does the act or executes the instrument which divests him of the property and at the same time vests it in that other person" and, therefore, that currency conversions are not transfers of funds or assets to any other person. The Respondent submits that *Riverin* should be distinguished on its facts because it concerned the transfer of an immoveable, and therefore has nothing to do with the transfer of funds.

[22] I agree with the Respondent that *Riverin* does not provide insight into the meaning of "transfer of funds" in this matter. *Riverin* was concerned with the transfer of property in the context of s 160(1) of the *Income Tax Act*, SC 1970-71-72, c 63. Specifically, the transfer of an immovable by the signing of a deed of conveyance upon default of a loan, which the property secured, and when the transfer was deemed to have occurred for purposes of income tax

assessment. Similarly, I do not agree with the Applicant's submission that *R v Bois,* 2004 SCC 6 is of assistance in this matter as it was concerned with the interpretation of "transfer for the possession" of property pursuant to s 462.31(1) of the *Criminal Code,* RSC 1985, c C-46.

[23] The Respondent submits that "transfer of funds" is the movement of money from one account to another, referencing *Cantore v R,* 2010 TCC 367 [*Cantore*]. *Cantore* was also an *Income Tax Act,* RSC 1985, c 1 (5th Supp) matter. There the auditor utilized the deposit method of accounting to determine the appellant's income but examined only one of the appellant's personal bank accounts and assumed that each deposit into that account represented a source of income. The Tax Court of Canada held that the auditor failed to examine all of the appellant's bank accounts even though the bank records for the account that the auditor did examine showed that the applicant often transferred funds between his various bank accounts. This failure by the auditor led to a serious deficiency whereby the auditor treated transfers of funds into the appellant's account from his other accounts, and from his bank borrowings, as gross revenue:

> [18] Here, the Appellant must either make a *prima facie* case that demolishes the assumptions relied on by the Minister in making the reassessments, thereby shifting the onus of proof to the Minister, or establish on a balance of probabilities that the deposits treated as gross revenue by the Minister were not from a source of income, including capital gains. However, when the auditor takes a blatant shortcut for reasons that remain unexplained in Court, that will affect the type of evidence that must be brought by the Appellant to meet his legal burden. In the present case, the Respondent failed to examine all of the Appellant's bank accounts so as to eliminate inter-account transfers. Therefore, it is sufficient for the taxpayer to demonstrate that deposits made to the particular bank account analyzed by the CRA were made by way of an inter-account transfer of funds. The reason for this is tied to the nature of the Minister's assumptions. In the case at bar, the Minister assumed that all deposits made in the sole bank account of the taxpayer that the Minister chose to analyze originated from an external revenue source. The taxpayer can demonstrate otherwise

> by showing that a particular deposit was made from funds held in another bank account. A transfer of funds between a taxpayer's bank accounts cannot, generally speaking, give rise to income. In this case, proof of such a transfer would be sufficient to constitute a *prima facie* case that demolishes the Minister's assumption that the particular deposit constitutes gross revenue. The onus would then shift back to the Minister who would be required to present evidence to show that the funds transferred from the other account originated from undeclared gross revenue. Had the Minister analyzed all of the Appellant's accounts and eliminated all deposits traceable to a transfer of funds between the taxpayer's bank accounts, the Appellant would then have had to show that the deposits did not originate from a revenue source.

[24] While this case is, again, not particularly on point, it does not support the Applicant's view, based on *Riverin*, that transfers between accounts of the same person are not transfers of funds, at least in the contest of the *Income Tax Act*.

[25] More significantly, to my mind, is that the Production Order requires "the production of third party records relating to the Respondent father's [the Applicant's] transfer of funds" and does not stipulate that the transfer of funds must be from one person to another as the Applicant submits.

[26] This ties into the circumstances surrounding the issuance of the Production Order, which is not to be interpreted in a vacuum (*Campbell* at para 15 citing *Sutherland* at para 31). It is not in dispute that the Production Order was granted as part of a family law divorce proceeding between the Applicant and his ex-wife. The Respondent submits that one of the purposes of the Production Order was to compel the Applicant to be more transparent and disclose financial details so that the parties have the necessary information to calculate the ex-wife's claim for the division of assets or support. The Respondent submits that the intention of the Production Order

would be to capture any transfer where the Applicant has transferred funds to himself, as such transfers could reveal the Applicant's efforts to hide or frustrate his ex-wife's claim.

[27] The Applicant made no submissions on this point. He also does not contest that the transfers identified by the Respondent occurred.

[28] In my view, given the context within which the Production Order was issued, it seems clear that Justice Howard of the Ontario Superior Court of Justice, Family Court, sought to have transfers of funds by the Applicant, made through third parties, produced for assessment in the division of the matrimonial assets. Production of all such transfers would be necessary to fairly and accurately assess the assets and their division. I would also note that Justice Howard could have, but chose not to, limit the scope of what transfers of funds were produced (i.e. transfers to or from specific accounts or individuals).

[29] Absent such a delineation of the scope of what was to be produced, and considering that the purpose of the Production Order would appear to be to ensure a fair and appropriate division of matrimonial assets, in my view, the Production Order can reasonably be interpreted as including *all* transfers, including transfers by the Applicant to himself via other accounts and related withdrawals by the Applicant.

[30] I also accept the Respondent's submission that it reasonably believed that the conversion of currency entailed a "transfer of funds" because it involved the Applicant depositing funds by bank drafts from various Canadian banks into his Canadian Altaif account (transferring funds

and crediting the account) and then converting and the money and moving it to his Altaif US account (transferring and debiting the account) prior to withdrawing those funds from the US account (transferring it from the US account to the Applicant personally).

[31] To the extent that the Applicant also submits that the documents produced by the Respondent were outside the scope of the Production Order due to the fact they included Statements of Accounts from January 1, 2013 to December 31, 2020, I do not agree. First, the Production Order did not limit the production to a specific period in time. And, in any event, as indicated in the affidavit filed by Mahdi Al Saady, Chief Executive Officer of Altaif Inc., sworn on March 28, 2022, although the statements of accounts show, at the top of those documents, a date range of January 1, 2013 to December 31, 2020, this is because Altaif's internal system defaults to this range. However, the records that were produced were for the years 2016 and 2017. The Al Saady affidavit also states that the Respondent's records indicated that the only period that Altaif conducted business with the Applicant was between 2016 and 2017, therefore, it would not have any records outside of that period. I note that the statements of account actually list only transactions in 2016 and 2017. In my view, nothing turns on this point.

[32] When appearing before me, the Applicant also argued that the Respondent's production overreached the requirements of the Production Order – thereby breaching *PIPEDA* – because the records included other information such as his account numbers, his account balances and his driver's licence. However, the Respondent simply produced what it understood it was required to produce – the actual records that were in its possession.

[33] And, to the extent the Applicant submits that the Respondent should have sought out his opinion and/or his lawyer's opinion with respect to the disclosure, I again disagree. The Production Order specifically required that the Respondent submit documents to Mr. Handysides. Nowhere in the Production Order did it state there was a requirement that the Respondent engage with the Applicant or his counsel.

[34] It is also not necessary to engage with the Applicant's submissions that the Respondent followed Mr. Handysides' instructions and not the Production Order, as I have concluded that the Records fell within the scope of the Production Order.

[35] Accordingly, in my view, the Records disclosed by the Respondent did not breach the Applicant's *PIPEDA* privacy rights because they fell within the scope of the disclosure required by the Production Order. This is determinative of the application.

Was the disclosure the direct cause of the Applicant's losses?

[36] Given my finding above, there is no need to address this issue. However, even if I am wrong in my understanding of the scope of the Production Order, the Applicant has not established that he suffered damages as a result of the disclosure.

[37] The Applicant submits that the disclosure of the information has caused him great hardship and difficulty, as the information has been used by Mr. Handysides in the family law proceeding to paint the Application as an individual who is trying to lie to the Court and that the production of the Records, which was beyond the scope of the Production Order, "are now out of

the bag". Further, that Mr. Handysides accused the Applicant of sending tens of thousands of dollars for the purposes of hiding it from the Canadian government; that the Applicant had purchased a $300,000 USD home in the US; and, that Mr. Handysides tried to mislead the Family Court with false accusations against the Applicant to get the Production Order. The Applicant submits that his ongoing legal dispute with this ex-wife "is put in jeopardy because of this disclosure".

[38] To be entitled to an award of damages, the Applicant must establish that the damages he suffered were caused by the *PIPEDA* violation on a balance of probabilities (*Miglialo* at paras 22-23). I acknowledge the Applicant's argument before me that he is not compelled to produce "solid evidence" of damages to succeed in being granted an award under s 16 of *PIPEDA.* In that regard, he relies on *Chitrakar v Bell TV*, 2013 FC 1103 [*Chitrakar*]. However, *Miglialo* is a more recent statement of the law on this point (see also *Blum v Mortgage Architects Inc*, 2015 FC 323 at para 19 [*Blum*]; *Montalbo v Royal Bank of Canada*, 2018 FC 1155 at para 61) and in *Chitraka* the Privacy Commissioner found that the applicant's complaint was well-founded and the Court found that Bell's behaviour was egregious.

[39] In my view, the Applicant has not established that the disclosure of his personal information has resulted in the damages he has claimed. I would first note that the if the Ontario Superior Court of Justice, Family Court, were of the view that the Respondent's disclosure in response to the Production Order exceeded the scope of that Order, then it would be at liberty to disregard the information. In that event, no damages would arise.

[40] Further, the Applicant's submissions and his supporting affidavit provide no particulars of the alleged damages. For example, the Applicant does not demonstrate how Mr. Handysides has allegedly used the information to paint him as a liar, as he submits. And, if the Applicant were of the view that Mr. Handysides misled the Family Court in order to obtain the Production Order, then the appropriate venue to address this was and is in that Court or by way of a complaint to the Law Society. That said, the Applicant's affidavit seems more concerned with the fact that "the cat is out of the bag" with respect to his foreign currency transactions and that he may now be accountable for them in his divorce proceedings. Even if that is so, it is open to the Applicant in that proceeding to explain why the foreign currency transactions do not impact the division of the matrimonial assets. If that explanation were accepted by the Family Court, then no damages would arise from the disclosure by the Respondent.

[41] The Applicant also offers no evidence or explanation of his assertion that his ongoing legal dispute with this ex-wife is "put in jeopardy" because of this disclosure. If it were assumed that by this he means that the division of matrimonial assets will take into account his foreign currency transactions then, to my mind, this speaks to the determination of an equitable division, not the putting of the Applicant in jeopardy.

[42] It is also significant that the Applicant submits that his family law matter is not finalized and therefore "damages are at large" as he has yet to see the consequence of the alleged breach of privacy. In other words, at this stage of the proceeding, no damages have been incurred due to the alleged breach.

[43] In my view, in these circumstances, the Applicant has not established that the damages he alleges he has suffered were actually incurred, or that they were or will be caused by the Respondent's disclosure of his personal information. Accordingly, even if there had been a breach of *PIPEDA*, I would decline to exercise my discretion to under s 16 of *PIPEDA* to make an award of damages.

[44] Even if I had not reached that conclusion, I note that the Applicant has put forward no rationale for his claim for $20,000 in damages. Further, this Court has held that *PIPEDA* gives the Court discretion to grant remedies, but that an award for damages should not be made lightly but only in the most egregious of circumstances (*Randall v Nubodys Fitness Centres*, 2010 FC 681 at para 55 [*Randall*]; see also *Miglialo* at paras 41and 48; *Townsend v Sun Life Financial*, 2012 FC 550 at paras 30-34; *Nammo v Transunion of Canada Inc.*, 2010 FC 1284 at para 71; *Biron v Royal Bank of Canada*, 2012 FC 1095 at paras 37-43; *Blum* at paras 11-20). The Applicant has not demonstrated that the Respondent acted egregiously, in bad faith or in a manner that indicates a disregard for the Applicant's privacy interest and that its actions demand either compensation, deterrence or vindication. Mr. Al Saady was cross-examined on his affidavit and explained why the Respondent believed that it was acting in compliance with the Production Order when it made the disclosure, and specifically, why the Respondent considered the foreign currency transactions to be "transfers of funds" and thus encompassed by the Production Order. In my view, that explanation and belief was reasonable.

Conclusion

[45] The Applicant's application under s 14 of *PIPEDA* is dismissed. The Respondent did not breach the Applicant's *PIPEDA* privacy rights because the disclosed Records fell within the scope of the disclosure required by the Production Order.

Costs

[46] Both parties sought costs but neither made submissions as to quantum.

[47] Pursuant to Rule 400(1) of the *Federal Courts Rules*, SOR/98-106, the Court has full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid. In exercising that discretion the Court may consider the factors set out in Rule 400(3), which include: the result of the proceeding; the importance and complexity of the issues; whether the public interest in having the proceeding litigated justifies a particular award of costs; any conduct of a party that tended to shorten or unnecessarily lengthen the duration of the proceeding; and, any other matter that the Court considers relevant. The Court may fix all or part of any costs by reference to Tariff B and may award a lump sum in lieu of, or in addition to, any assessed costs (Rule 400(4)).

[48] In this matter, I am of the view that an award costs to the Respondent, as the successful party, based on Column III of Tariff B is appropriate (Rule 407). The late filing of the Respondent's additional book of authorities was unhelpful to the Respondent and the Court but does not warrant an escalation of this award.

JUDGMENT IN T-230-22

THIS COURT'S JUDGMENT is that

1. The Applicant's application under s 14 of *PIPEDA* is dismissed; and

2. The Respondent shall have its costs based on Column III of Tariff B.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-230-22
STYLE OF CAUSE:	SADEQ AL-HUSSEINI v ALTAIF INC., ALSO KNOW AS, ALTAIF FOREIGN EXCHANGE SIMPLIFIED
PLACE OF HEARING:	BY VIDEOCONFERENCE USING ZOOM
DATE OF HEARING:	OCTOBER 27, 2022
JUDGMENT AND REASONS:	STRICKLAND J.
DATED:	NOVEMBER 2, 2022

APPEARANCES:

Nicholas Harris	FOR THE APPLICANT
Roland Hung	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Torkin Manes LLP Barristers and Solicitors Toronto, Ontario	FOR THE RESPONDENT