

Federal Court



Cour fédérale

**Date: 20130115**

**Dockets: T-1587-11  
T-1588-11**

**Citation: 2013 FC 31**

**Ottawa, Ontario, January 15, 2013**

**PRESENT: The Honourable Mr. Justice Simon Noël**

**BETWEEN:**

**TREVOR KNISS**

**Applicant**

**and**

**THE PRIVACY COMMISSIONER  
OF CANADA**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of a report of findings of the Office of the Privacy Commissioner of Canada [the “OPC”]. The OPC issued the report on July 12, 2011, after the Applicant, a self-represented litigant, had made a complaint pursuant to section 11 of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 [“PIPEDA”] against Telus Communications Company [“Telus”]. In a parallel proceeding, the Applicant is applying for judicial review of another report of findings by the OPC, issued on July 14, 2011 after he had filed a

complaint against Shepell-FGI [“Shepell”], an employee-assistance provider for Telus. These reasons will address the two separate applications for judicial review as they are both generally based on the same facts, as they raise the same issues. For the following reasons, both judicial review applications are dismissed without costs.

**I. Facts**

[2] The Applicant, an employee of Telus, was involved in a motor vehicle accident in 1991 that resulted in a chronic back condition. Following the accident, the Applicant had to be assigned to a different task because of his health condition. He assumed the position of contractor/inspector, which was abolished following a strike.

[3] Telus made efforts to find the Applicant a suitable position, and it determined that the position of access technician within the Telus Centre for Excellence could be a suitable position for him. The Applicant was dissatisfied with the proposed position as he believed that sitting at a desk would be detrimental to his health. He preferred his former position that involved driving, an activity that he knew would help to relieve his back pain.

[4] On October 2006, the Applicant commenced consultations with a Shepell counsellor, following a referral for a functional capacity evaluation. After a few sessions, it became apparent to the counsellor that the Applicant was dissatisfied with his newly assigned position at Telus. In November 2006, the Applicant went on disability leave.

[5] On April 16, 2007, the Applicant was advised to report to work at his new position on April 30, 2007. On April 19, 2007, the Applicant contacted the Shepell counsellor. The counsellor alleged that the Applicant was very angry about his work assignment and that his anger escalated during the conversation. She was not able to calm him down. Although the counsellor confirmed that no formal threat was made by the Applicant, she was concerned that the Applicant might represent a risk to himself or to others once in the workplace and therefore contacted her supervisor.

[6] The counsellor, her manager and Shepell's account executive manager on the Telus account had a discussion on the Applicant and they decided to disclose the counsellor's concerns regarding the Applicant to Telus. The standard that they used to decide if disclosure was appropriate was the following: "[i]s there a risk of harm to self or others – with a possible escalation to cause harm as a result of an incident?" Indeed, the Statement of Understanding signed on October 4, 2006 by the Applicant includes an exception to the confidentiality of his discussions with a counsellor when a risk to his own person or to others is involved. The information was therefore disclosed to Telus on April 20, 2007, and given to a small group of Telus employees that included the Applicant's former supervisors.

[7] The Applicant, however, claims that he never signed any consent form authorizing the disclosure of personal information and that he never made any threats.

[8] On April 23, 2007, a meeting was held at Telus to make a Threat Assessment in order to determine if the Applicant's return to work would involve a risk. Telus decided to ask the Applicant to attend a meeting with Telus Corporate Security. The Applicant refused to attend the meeting, and

therefore Telus asked the Applicant by letter on April 30, 2007, to attend an appointment on May 15, 2007, with a psychiatrist. In the letter there was no mention of the fact that a risk assessment would be conducted. On May 7, 2007, the Applicant signed a consent form with respect to the appointment with the psychiatrist and two consent forms authorizing Telus and the psychiatrist to exchange information regarding the Applicant. The Applicant did not attend the appointment with the psychiatrist. Information was also disclosed to his family doctor. The Applicant's employment was then terminated in July 2007. The Applicant brought the issue to his Union and pursued a grievance under the *Canada Labour Code*, RSC 1985, c L-2 with respect to his dismissal. The grievance was dismissed in a decision dated July 23, 2009. The arbitrator concluded that the Applicant was properly dismissed because he refused to cooperate with Telus when attempts were made to accommodate him. At the hearing, the Applicant made it known that he had filed for judicial review of his labor arbitration award.

[9] In June 2008, the Applicant filed a complaint with the Office of the Information and Privacy Commissioner of Alberta against both Telus and Shepell. In this complaint, he alleges that the disclosure of personal information by Shepell to Telus occurred without his consent and that the information communicated alleged that he had made threats, when in fact he had not. This complaint was referred to the OPC. The Applicant alleges that Telus did not verify the truthfulness of the information and that it illegally disclosed such information to several employees, his family doctor and a psychiatrist without his consent. The Privacy Commissioner considered both complaints unfounded and therefore dismissed them. The two reports of findings dated July 2011 are the decisions subject to the present judicial review proceedings.

## **II. Office of the Privacy Commissioner of Canada's Findings**

[10] As for Shepell's alleged unlawful disclosure of information, the Privacy Commissioner applied Principle 4.3 of Schedule 1 of the PIPEDA when she made her determination. The conclusion of the Privacy Commissioner is that the disclosure of information regarding the Applicant by Shepell to Telus was made in accordance with the Statement of Understanding.

[11] As for Telus' alleged unlawful disclosure of information to Telus employees and medical practitioners, the Privacy Commissioner concluded that the complaint is unfounded. First, Telus' disclosure of the Applicant's personal information was not unlawful as an individual who accepts employment is deemed to have consented to the collection, use and disclosure of personal information for management purposes. Moreover, the exchange of information between Telus and the family doctor was a result of an ongoing relationship between the doctor and the Telus Health Department which began in November 2006. This occurred as a result of an authorization form signed by the Applicant. Disclosure of personal information was made to the psychiatrist pursuant to a consent form signed on May 7, 2007, which was valid until the Applicant's withdrawal of his consent.

## **III. Applicant's Submissions**

[12] The Applicant claims that he never signed any consent form authorizing Shepell to disclose personal information, and that he never made any threats. He therefore submits that Shepell unlawfully disclosed personal information to Telus, who then unlawfully disclosed his personal information to employees and medical practitioners. The Applicant asks this Court to order that the matter be sent for re-determination by the OPC. He alleges that the investigations were incomplete,

and unfair since the information received from both Telus and Shepell was not communicated to him, and that the labour arbitrator's decision was illegally disclosed to the Privacy Commissioner by Telus.

#### **IV. Respondent's Submissions**

[13] The Respondent submits that the Applicant had an adequate alternative remedy under section 14 of the PIPEDA, which the Applicant ought to have pursued. A judicial review should not replace this legislative remedy provided for by the PIPEDA. The Respondent also draws the Court's attention to the fact that the Applicant had filed considerable new evidence that was not part of the OPC's certified record. Thus, if the Court decides to exercise its discretion to hear this judicial review application, the Respondent requests an Order ruling the new evidence inadmissible.

[14] The Respondent also submits that the Applicant cannot seek judicial review of the two reports by the OPC because they do not consist of a final decision that can be reviewed under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7.

[15] Finally, the Respondent submits that if the Court decides to hear the present judicial review application, all of the Privacy Commissioner's findings should be considered reasonable.

#### **V. Issues**

[16] I agree with counsel for the Respondent that the issue arising from this application is the following:

Does the Applicant have an adequate alternative remedy such that this Court ought to decline to entertain this application for judicial review?

[17] Should the Court decide to hear the application for judicial review on its merits, the Court will have to examine two additional issues:

1. Is all of the evidence submitted by the Applicant admissible?
2. Has the Applicant established any grounds for judicial review of the Privacy Commissioner's reports of findings?

## **VI. The Standard of Review**

[18] If this Court finds that it is necessary to proceed with the judicial review of the reports, the standard of review is reasonableness. Indeed, the reports issued by the OPC turn on factual findings and the application of the PIPEDA to facts (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 51, [2008] 1 SCR 190). Questions of facts should also be reviewed under the standard of reasonableness. The issues raised by the Applicant are ambiguous as he was not able to explain clearly what factual concerns he has in the present case, a point that will be further developed below. It may be that the Applicant raised questions of fact which could also involve questions of natural justice or procedural fairness, both principles being applicable to the OPC. If that is the case, then the applicable standard is correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339).

## VII. Relevant Legislation

[19] In order to facilitate the reading of this decision, the relevant legislation is included as an Annex to the present decision (as Annex A).

## VIII. Analysis

### A. *A brief explanation of the role of the Privacy Commissioner when investigating pursuant to the PIPEDA*

[20] As sections 11, 12 and 13 of the PIPEDA show, an individual has a broad right to complain to the OPC against any organization that allegedly breached its obligations under the Act.

[21] The Privacy Commissioner is appointed by Parliament as an independent Officer of Parliament pursuant to section 53 of the *Privacy Act*, RCS 1985, c P-21 [*“Privacy Act”*].

[22] In her capacity under the PIPEDA, the Privacy Commissioner conducts “[...] impartial, independent and non-partisan investigations” when dealing with complaints. She is an “[...] administrative investigator not an adjudicator” (see *Canada (Privacy Commissioner) v Blood Tribe Department of Health*, 2008 SCC 44, at para 20, [2008] 2 SCR 574).

[23] The Privacy Commissioner has extensive investigative powers which require her to keep all information received during the course of an investigation confidential (see sections 12.1 and 20 of the PIPEDA). Her reports and findings may include recommendations that are not binding. The OPC may ask to be informed of the actions taken by the organization, if any, or to be given an explanation why no such action will follow (see sections 13(1)(a) and 13(1)(c) of the PIPEDA,



*Englander v Telus Communications Inc.*, 2004 FCA 387 at para 71, 247 DLR (4th) 275

[*Englander*]).

[24] It is important to note that the Supreme Court, in *Lavigne v Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53 at paras 37-38, [2002] 2 SCR 773, concluded that the role of the Privacy Commissioner is comparable to that of an “ombudsman,” which requires her to follow “[...] an approach that distinguishes [her] from a Court,” and that her mission “[...] is to resolve tension in an informal manner.”

[25] Where a party to an investigation by the OPC is not satisfied with the report, its findings or its recommendations, if any, he may apply to the Federal Court in respect of any matter that may arise from the complaint made or from the report issued and that relates to subject matters referred to in schedule 1 of the PIPEDA (see section 14(1) of the PIPEDA). The Respondent, in such a proceeding, is the organization against whom the complaint was made but the OPC may seek leave to intervene or act on behalf of the complainant if consent is given (see section 15 of the PIPEDA).

[26] As explained above, the Privacy Commissioner does not have the power to grant binding remedies. The Federal Court has the jurisdiction to grant various remedies, which include awarding damages or issuing compliance orders (see section 16 of the PIPEDA). The process is to be completed without delay and in a summary way unless the Court considers it inappropriate. Hearings may be, when appropriate, held *ex parte*, *in camera* to avoid disclosure of information protected by the Act (see section 17 of the PIPEDA).

[27] It is also important to note that when the OPC issues a report, she must inform the parties involved in the investigation that section 14 of the PIPEDA provides for a recourse before the Federal Court (see section 13(1)(d) of the PIPEDA). Such notice was given to the Applicant when the reports were issued.

[28] A recourse initiated under section 14 of the PIPEDA is not a judicial review of the Privacy Commissioner's report. It is a new application, heard *de novo*, and the burden is on the Applicant to present evidence of a breach of the Act. In order for a complainant to benefit from this recourse, the OPC needs to have received a complaint that was investigated and that resulted in the issuance of a report. (See *Englander, supra* at para 47 and *Eastmond v Canadian Pacific Railway*, 2004 FC 852 at para 118, 16 Admin LR (4th) 275).

*B. Does the Applicant have an adequate alternative remedy?*

[29] The Applicant has filed for judicial review of the two reports of the OPC on September 27, 2011. It is well recognized that a judicial review is discretionary. Indeed, prerogative writs, which have been encompassed by section 18.1 of the *Federal Courts Act*, are discretionary. Thus, a judicial review is not only discretionary, it is also an extraordinary procedure (see *Canadian Pacific Ltd v Matsqui Indian Band*, [1995] 1 SCR 3 at para 30, 122 DLR (4th) 129 [*Matsqui Indian Band*]).

[30] When considering whether or not it should enter into a judicial review process or alternatively, that the Applicant should proceed or should have proceeded through the legislative recourse provided for by the Act, this Court must consider certain factors such as the convenience of the alternative remedy, the nature of the error and the nature of the appellate body (i.e., its

investigatory, decision-making and remedial capacities). (See *Matsqui Indian Band*, supra, at para 37.)

[31] The legislator elaborated a clear process that needs to be followed when dealing with complaints pursuant to the PIPEDA. The process includes an investigative component with the Privacy Commissioner and a judicial one with the Federal Court. The judicial proceedings can be initiated only after the OPC has investigated and issued a report. Unlike the judicial remedies that are available to a complainant who pursues a recourse under section 14 of the PIPEDA, the report of the Privacy Commissioner is not binding on the parties involved.

[32] Another determinative factor is the requirement that notice of judicial remedial recourse must be communicated to the parties by the Privacy Commissioner. By including such an obligation, the legislator intended that applicants pursue this recourse first.

[33] Moreover, the jurisdiction of the Federal Court over the recourse includes any matter related to the complaint made or any matters related to the Privacy Commissioner's report which are related to topics included in Schedule 1 of the PIPEDA.

[34] The judicial recourse provided for by the Act is more exhaustive than the judicial review procedure. Indeed, the scope of the recourse under section 14 of the PIPEDA is broader than that of a judicial review, which is limited to the decision made and the documentation contained in the certified record, and which is conducted according to specific standards of review. The judicial

recourse established by the legislator in the PIPEDA is more appropriate to deal with all matters raised in a complaint than a judicial review application.

[35] In addition, the powers of the Federal Court when dealing with the recourse provided by section 14 of the PIPEDA are not comparable to a judicial review process. Recourse under section 14 is a *de novo* procedure. The burden is on the complainant to file evidence to show a breach of the PIPEDA, exhibits can be filed, witnesses can testify, parties have a right to cross-examination and submissions are made in writing and orally. The evidence is to be assessed on a balance of probabilities. It is well-known that a judicial review proceeding serves a very different purpose, which is to review the legality of an administrative decision or action.

[36] Furthermore, as a result of the judicial process, the Applicant may be granted remedies such as damages or the issuance of a compliance Order directed at the organization that committed a breach of the Act. In a judicial review of an administrative decision, a Court may quash it and return the matter to the Privacy Commissioner for further investigation in accordance with the reasons given. The intent of the legislator is for a complainant to first exhaust his recourse under section 14 of the PIPEDA, which might result in the award of damages or other beneficial remedies for the Applicant unavailable to a Court conducting a judicial review.

[37] As noted above, in his notices of application and written submissions the Applicant raised general allegations of errors that have been committed by the Privacy Commissioner. He namely submitted that errors of fact were made, that the investigation was not fair and that the OPC reports relied on fraudulent or perjured evidence.

[38] This Court did the best it could to gather the oral and written submissions made by the self-represented Applicant. The Applicant submits that he did not utter threats to Shepell's counsellor, that Shepell had no justification to disclose information to Telus and that Telus should not have informed some of its supervisors, his family doctor and the psychiatrist. The Statement of Understanding, authorization form and consent form signed by the Applicant did not permit such disclosure. In addition, he also suggests that he had a right to know the content of the investigation, which includes what Shepell and Telus were alleging and that the arbitration decision unfavourable to him should not have been communicated to the OPC by Telus because of its confidential nature.

[39] These are all matters that could and would have been dealt with if a judicial recourse related to the reports had been filed with the Federal Court under section 14 of the PIPEDA. All of these matters are based on facts, and a judge of this Court would have been able to deal with all matters subject to the evidence presented by the parties. Furthermore, any legal matter concerning the Statement of Understanding, the authorization form and the consent form could have been dealt with. Also, any concern that the Applicant may have concerning the communication of the arbitration decision could and would have been addressed.

[40] The delay of 45 days to file an application with the Federal Court under subsection 14(2) of the PIPEDA has now expired and the Applicant will not have another venue to present his complaints related to the two reports. If there is to be no judicial review of the reports, can that be an argument to support an exercise of my discretion in favour of hearing these judicial review applications? Since the legislator clearly intended that complainants first exhaust their recourse under subsection 14(2) of the PIPEDA to the exclusion of other judicial recourses, the intent of the

legislator would therefore be neutralized if I exercised my discretion in favour of hearing these judicial review applications. This is not the approach that should be followed by this Court. The Applicant made a decision to proceed with these judicial review applications. He must therefore assume the consequences of his decision. (See *Canadian Human Rights Commission v Frank D. Jones and Air Canada*, [1982] 1 FC 738 at para 19, 128 DLR (3d) 535.) The legislative judicial recourse provided by the PIPEDA is an alternative remedy that was adequate in the present circumstances. (See *Sandiford v Canada*, 2007 FC 225; *Lazar v Canada (Attorney General)*, 1999 CanLII 7969 at para 18.)

[41] The fact that the Applicant is a self-represented litigant is not a reason for interpreting the law differently or to be open to certain equitable accommodations. It would be unfair to other parties represented by counsel to do so.

[42] In conclusion, I find that there is an adequate alternative remedy provided by section 14 of the PIPEDA that would have been the appropriate recourse to deal with all matters raised concerning the complaint, the OPC reports and the investigation that followed. When comparing the recourse provided by section 14 of the PIPEDA with the possibilities offered by judicial review, which is discretionary and extraordinary in nature and limited to the review of the reports and the documentation contained in the certified record, I find that the former is the appropriate recourse as the intent of the legislator to this effect is clear. I will not therefore exercise my discretion to judicially review the reports of the Privacy Commissioner, and I will dismiss both applications for judicial review.

**IX. Additional Comments**

[43] Considering the second issue in light of my conclusion made above, there is no need to proceed any further. If there had been matters related to a breach of the principle of natural justice, a breach of fairness or an allegation of reasonable apprehension of bias, any of which could not be remedied by recourse to section 14 of the PIPEDA, a judicial review may have been appropriate. This was not the case in the present files. Indeed, the OPC conducted its investigation in accordance with the PIPEDA. Having said that, I would still like to add the following comments.

[44] For the purposes of the judicial review, the Applicant filed a substantial amount of new evidence that the Privacy Commissioner did not have during the investigation. Approximately 10 exhibits filed by the Applicant contained new documentation. Out of the 53 paragraphs of the written submissions of the Applicant, at least 14 paragraphs dealt with new evidence that was not before the Privacy Commissioner.

[45] It is a well-known principle that in judicial review, the certified record of the tribunal from which the decision originates contains the evidence to be relied upon by the parties and by the Court. Only on an exceptional basis will new evidence be filed if a request is made to the Court and the Court grants permission. Such permission may be granted when allegations of bias or issues of procedural fairness are raised. In this case, no request was made but, more importantly, the matters raised by the Applicant were all to a great extent related to the evidence as presented by the parties. Initially, it seemed as if the Applicant did raise general issues of bias and procedural fairness as he used the exact wording of section 18.1 of the *Federal Courts Act*, but upon careful examination, the issues raised by the Applicant were related to the evidence filed and the investigation process. No

specific issues related to bias or procedural fairness were convincingly presented, and all matters as raised could have been dealt with before the Federal Court under section 14 of the PIPEDA.

[46] As a result, the Applicant should have been aware that such new evidence cannot be part of the judicial review proceedings. It was therefore found to be inadmissible. The Applicant was told during the hearing that the filing of new evidence, which consists of all of the documents that were not part of the OPC investigation files, would not be permitted.

[47] The Court has also looked at the reports of the OPC in light of the Applicant's criticisms and found them to be factual, understandable and dispositive of all the issues raised by the complaints as filed. The reports conclude that the Applicant did not utter threats as he argued, but also that the Shepell counsellor felt, following the conversation with the Applicant, that he was so upset that he might have represented a risk to himself or to others in the workplace. She was therefore under the obligation to inform her supervisor, who then decided to inform Telus, the employer. The counsellor also relied upon the Statement of Understanding in her decision to proceed in this way. The reports also found that Telus was right to inform some supervisors of the events involving the Applicant in order to assess the situation. Furthermore, the OPC found that it was, in the circumstances, justifiable to inform the Applicant's own family doctor and an independent psychiatrist who was mandated to evaluate the Applicant. Based on past collaboration between Telus Health Department and the family doctor, and on the signed authorization, it was reasonable to expect that such information would be exchanged. Regarding the disclosure to the psychiatrist, the reports note that a consent form had been signed and that the information was released prior to the withdrawal of consent by the Applicant.



[48] Finally, my last comment is for the Applicant. Having seen and heard the Applicant for more than a few hours, I was able to have extensive exchanges with him about the issues and his own challenges in life. In 1991, the Applicant was involved in a major car accident. A chronic back condition resulted from the accident, affecting his functional working abilities. His condition had a major impact on his working life and also probably on his personal life. In 2005, Telus, his employer, through a process of re-evaluating positions following a strike, decided to eliminate the position of contractor/inspector which the Applicant occupied. In order to accommodate the Applicant, his employer identified Access Technician with the Telus Center for Excellence as a suitable position. The Applicant felt that he could not accept it since it was a desk job that he thought would be detrimental to his health given his back condition. From that time on, his life was never to be the same. The Applicant is trying desperately to redo the past and go back in time. It is not possible. The Applicant is trying to identify a guilty party responsible for his present condition. As the processes followed with the OPC (and the labour arbitrator subject to the result of judicial proceedings) show, the Applicant's situation was not improperly dealt with. Telus and Shepell were concerned about his health condition and the disclosure of medical information to reliable individuals was done in his own interest. His health situation was of concern to all. There is no guilty party to be found to explain his situation in this proceeding. This judicial review is the result of the Applicant's misunderstanding of his supervisor's and Shepell counsellor's steps taken in trying to assist him and of his former employer Telus (in the other judicial review). Without wanting to impose anything on the Applicant, it is humbly suggested that some acceptance of the past be made so that what remains of life can be approached under a better light.

[49] The Respondent is not seeking costs and thus none will be awarded.

**JUDGMENT**

**FOR ALL THESE REASONS, THIS COURT ORDERS AND ADJUGES THAT:**

1. The applications for judicial review in files T-1587-11 and T-1588-11 are dismissed because an adequate recourse was available to the Applicant under section 14 of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5.
2. No costs are to be awarded.

“Simon Noël”

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Judge

ANNEX A

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

*Loi sur la protection des renseignements  
personnels et les documents  
électroniques, LC 2000, ch 5*

*Filing of Complaints*

*Dépôt des plaintes*

Contravention

Violation

11. (1) An individual may file with the Commissioner a written complaint against an organization for contravening a provision of Division 1 or for not following a recommendation set out in Schedule 1.

11. (1) Tout intéressé peut déposer auprès du commissaire une plainte contre une organisation qui contrevient à l'une des dispositions de la section 1 ou qui omet de mettre en œuvre une recommandation énoncée dans l'annexe 1.

Commissioner may initiate complaint

Plaintes émanant du commissaire

(2) If the Commissioner is satisfied that there are reasonable grounds to investigate a matter under this Part, the Commissioner may initiate a complaint in respect of the matter.

(2) Le commissaire peut lui-même prendre l'initiative d'une plainte s'il a des motifs raisonnables de croire qu'une enquête devrait être menée sur une question relative à l'application de la présente partie.

[...]

[...]

Notice

Avis

(4) The Commissioner shall give notice of a complaint to the organization against which the complaint was made.

(4) Le commissaire donne avis de la plainte à l'organisation visée par celle-ci.

*Investigations of Complaints*

*Examen des plaintes*

Examination of complaint by  
Commissioner

Examen des plaintes par le commissaire

12. (1) The Commissioner shall conduct an investigation in respect of a complaint, unless the Commissioner is of the opinion that

12. (1) Le commissaire procède à l'examen de toute plainte dont il est saisi à moins qu'il estime celle-ci irrecevable pour un des motifs suivants :

(a) the complainant ought first to exhaust

a) le plaignant devrait d'abord épuiser les

grievance or review procedures otherwise reasonably available;

(b) the complaint could more appropriately be dealt with, initially or completely, by means of a procedure provided for under the laws of Canada, other than this Part, or the laws of a province; or

(c) the complaint was not filed within a reasonable period after the day on which the subject matter of the complaint arose.

(2) [Not in force]

#### Notification

(3) The Commissioner shall notify the complainant and the organization that the Commissioner will not investigate the complaint or any act alleged in the complaint and give reasons.

#### Compelling reasons

(4) The Commissioner may reconsider a decision not to investigate under subsection (1), if the Commissioner is satisfied that the complainant has established that there are compelling reasons to investigate.

#### Powers of Commissioner

12.1 (1) In the conduct of an investigation of a complaint, the Commissioner may

(a) summon and enforce the appearance of persons before the Commissioner and compel them to give oral or written evidence on oath and to produce any records and things that the Commissioner considers necessary to investigate the complaint, in the same manner and to the

recours internes ou les procédures d'appel ou de règlement des griefs qui lui sont normalement ouverts;

b) la plainte pourrait avantageusement être instruite, dans un premier temps ou à toutes les étapes, selon des procédures prévues par le droit fédéral - à l'exception de la présente partie - ou le droit provincial;

c) la plainte n'a pas été déposée dans un délai raisonnable après que son objet a pris naissance.

(2) [Non en vigueur]

#### Avis aux parties

(3) S'il décide de ne pas procéder à l'examen de la plainte ou de tout acte allégué dans celle-ci, le commissaire avise le plaignant et l'organisation de sa décision et des motifs qui la justifient.

#### Raisons impérieuses

(4) Le commissaire peut réexaminer sa décision de ne pas examiner la plainte aux termes du paragraphe (1) si le plaignant le convainc qu'il existe des raisons impérieuses pour ce faire.

#### Pouvoirs du commissaire

12.1 (1) Le commissaire peut, dans le cadre de l'examen des plaintes :

a) assigner et contraindre des témoins à comparaître devant lui, à déposer verbalement ou par écrit sous la foi du serment et à produire les documents ou pièces qu'il juge nécessaires pour examiner la plainte dont il est saisi, de la même façon et dans la même mesure

same extent as a superior court of record;

qu'une cour supérieure d'archives;

(b) administer oaths;

b) faire prêter serment;

(c) receive and accept any evidence and other information, whether on oath, by affidavit or otherwise, that the Commissioner sees fit, whether or not it is or would be admissible in a court of law;

c) recevoir les éléments de preuve ou les renseignements - fournis notamment par déclaration verbale ou écrite sous serment - qu'il estime indiqués, indépendamment de leur admissibilité devant les tribunaux;

(d) at any reasonable time, enter any premises, other than a dwelling-house, occupied by an organization on satisfying any security requirements of the organization relating to the premises;

d) visiter, à toute heure convenable, tout local - autre qu'une maison d'habitation - occupé par l'organisation, à condition de satisfaire aux normes de sécurité établies par elle pour ce local;

(e) converse in private with any person in any premises entered under paragraph (d) and otherwise carry out in those premises any inquiries that the Commissioner sees fit; and

e) s'entretenir en privé avec toute personne se trouvant dans le local visé à l'alinéa d) et y mener les enquêtes qu'il estime nécessaires;

(f) examine or obtain copies of or extracts from records found in any premises entered under paragraph (d) that contain any matter relevant to the investigation.

f) examiner ou se faire remettre des copies ou des extraits des documents contenant des éléments utiles à l'examen de la plainte et trouvés dans le local visé à l'alinéa d).

#### Dispute resolution mechanisms

#### Mode de règlement des différends

(2) The Commissioner may attempt to resolve complaints by means of dispute resolution mechanisms such as mediation and conciliation.

(2) Il peut tenter de parvenir au règlement de la plainte en ayant recours à un mode de règlement des différends, notamment la médiation et la conciliation.

#### Delegation

#### Délégation

(3) The Commissioner may delegate any of the powers set out in subsection (1) or (2).

(3) Il peut déléguer les pouvoirs que les paragraphes (1) et (2) lui confèrent.

[...]

[...]

## *Commissioner's Report*

### Contents

13. (1) The Commissioner shall, within one year after the day on which a complaint is filed or is initiated by the Commissioner, prepare a report that contains

(a) the Commissioner's findings and recommendations;

(b) any settlement that was reached by the parties;

(c) if appropriate, a request that the organization give the Commissioner, within a specified time, notice of any action taken or proposed to be taken to implement the recommendations contained in the report or reasons why no such action has been or is proposed to be taken; and

(d) the recourse, if any, that is available under section 14.

(2) [Repealed, 2010, c. 23, s. 84]

### Report to parties

(3) The report shall be sent to the complainant and the organization without delay.

### 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,

## *Rapport du commissaire*

### Contenu

13. (1) Dans l'année suivant, selon le cas, la date du dépôt de la plainte ou celle où il en a pris l'initiative, le commissaire dresse un rapport où :

a) il présente ses conclusions et recommandations;

b) il fait état de tout règlement intervenu entre les parties;

c) il demande, s'il y a lieu, à l'organisation de lui donner avis, dans un délai déterminé, soit des mesures prises ou envisagées pour la mise en oeuvre de ses recommandations, soit des motifs invoqués pour ne pas y donner suite;

d) mentionne, s'il y a lieu, l'existence du recours prévu à l'article 14.

(2) [Abrogé, 2010, ch. 23, art. 84]

### Transmission aux parties

(3) Le rapport est transmis sans délai au plaignant et à l'organisation.

### Demande

14. (1) Après avoir reçu le rapport du commissaire ou l'avis l'informant de la fin de l'examen de la plainte au titre du paragraphe 12.2(3), le plaignant peut demander que la Cour entende toute question qui a fait l'objet de la plainte - ou qui est mentionnée dans le rapport - et qui est visée aux articles 4.1.3, 4.2, 4.3.3, 4.4, 4.6, 4.7 ou 4.8 de l'annexe 1, aux articles

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, in subsection 5(3) or 8(6) or (7) or in section 10.

4.3, 4.5 ou 4.9 de cette annexe tels qu'ils sont modifiés ou clarifiés par la section 1, aux paragraphes 5(3) ou 8(6) ou (7) ou à l'article 10.

#### Time of application

(2) A complainant must make an application within 45 days after the report or notification is sent or within any further time that the Court may, either before or after the expiry of those 45 days, allow.

#### Délai

(2) La demande est faite dans les quarante-cinq jours suivant la transmission du rapport ou de l'avis ou dans le délai supérieur que la Cour autorise avant ou après l'expiration des quarante-cinq jours.

#### For greater certainty

(3) For greater certainty, subsections (1) and (2) apply in the same manner to complaints referred to in subsection 11(2) as to complaints referred to in subsection 11(1).

#### Précision

(3) Il est entendu que les paragraphes (1) et (2) s'appliquent de la même façon aux plaintes visées au paragraphe 11(2) qu'à celles visées au paragraphe 11(1).

#### Commissioner may apply or appear

15. The Commissioner may, in respect of a complaint that the Commissioner did not initiate,

(a) apply to the Court, within the time limited by section 14, for a hearing in respect of any matter described in that section, if the Commissioner has the consent of the complainant;

(b) appear before the Court on behalf of any complainant who has applied for a hearing under section 14; or

(c) with leave of the Court, appear as a party to any hearing applied for under section 14.

#### Exercice du recours par le commissaire

15. S'agissant d'une plainte dont il n'a pas pris l'initiative, le commissaire a qualité pour :

a) demander lui-même, dans le délai prévu à l'article 14, l'audition de toute question visée à cet article, avec le consentement du plaignant;

b) comparaître devant la Cour au nom du plaignant qui a demandé l'audition de la question;

c) comparaître, avec l'autorisation de la Cour, comme partie à la procédure.

#### Remedies

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

#### Réparations

16. La Cour peut, en sus de toute autre réparation qu'elle accorde :

(a) order an organization to correct its practices in order to comply with sections 5 to 10;

(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.

#### Precautions

(2) In any proceedings arising from an application made under section 14 or 15, the Court shall take every reasonable precaution, including, when appropriate, receiving representations ex parte and conducting hearings in camera, to avoid the disclosure by the Court or any person of any information or other material that the organization would be authorized to refuse to disclose if it were requested under clause 4.9 of Schedule 1.

[...]

#### *GENERAL*

##### Confidentiality

20. (1) Subject to subsections (2) to (6), 12(3), 12.2(3), 13(3), 19(1), 23(3) and 23.1(1) and section 25, the Commissioner

a) ordonner à l'organisation de revoir ses pratiques de façon à se conformer aux articles 5 à 10;

b) lui ordonner de publier un avis énonçant les mesures prises ou envisagées pour corriger ses pratiques, que ces dernières aient ou non fait l'objet d'une ordonnance visée à l'alinéa a);

c) accorder au plaignant des dommages-intérêts, notamment en réparation de l'humiliation subie.

#### Procédure sommaire

17. (1) Le recours prévu aux articles 14 ou 15 est entendu et jugé sans délai et selon une procédure sommaire, à moins que la Cour ne l'estime contre-indiqué.

#### Précautions à prendre

(2) À l'occasion des procédures relatives au recours prévu aux articles 14 ou 15, la Cour prend toutes les précautions possibles, notamment, si c'est indiqué, par la tenue d'audiences à huis clos et l'audition d'arguments en l'absence d'une partie, pour éviter que ne soient divulgués, de par son propre fait ou celui de quiconque, des renseignements qui justifient un refus de communication de renseignements personnels demandés en vertu de l'article 4.9 de l'annexe 1.

[...]

#### *DISPOSITIONS GÉNÉRALES*

##### Secret

20. (1) Sous réserve des paragraphes (2) à (6), 12(3), 12.2(3), 13(3), 19(1), 23(3) et 23.1(1) et de l'article 25, le commissaire



or any person acting on behalf or under the direction of the Commissioner shall not disclose any information that comes to their knowledge as a result of the performance or exercise of any of the Commissioner's duties or powers under this Part.

#### Public interest

(2) The Commissioner may make public any information relating to the personal information management practices of an organization if the Commissioner considers that it is in the public interest to do so.

#### Disclosure of necessary information

(3) The Commissioner may disclose, or may authorize any person acting on behalf or under the direction of the Commissioner to disclose, information that in the Commissioner's opinion is necessary to

(a) conduct an investigation or audit under this Part; or

(b) establish the grounds for findings and recommendations contained in any report under this Part.

#### Disclosure in the course of proceedings

(4) The Commissioner may disclose, or may authorize any person acting on behalf or under the direction of the Commissioner to disclose, information in the course of

(a) a prosecution for an offence under section 28;

(b) a prosecution for an offence under

et les personnes agissant en son nom ou sous son autorité sont tenus au secret en ce qui concerne les renseignements dont ils prennent connaissance par suite de l'exercice des attributions que la présente partie confère au commissaire.

#### Intérêt public

(2) Le commissaire peut rendre publique toute information relative aux pratiques d'une organisation en matière de gestion des renseignements personnels, s'il estime que cela est dans l'intérêt public.

#### Communication de renseignements nécessaire

(3) Il peut s communiquer - ou autoriser les personnes agissant en son nom ou sous son autorité à communiquer - les renseignements qui, à son avis, sont nécessaires pour :

a) examiner une plainte ou procéder à une vérification en vertu de la présente partie;

b) motiver les conclusions et recommandations contenues dans les rapports prévus par la présente partie.

#### Communication dans le cadre de certaines procédures

(4) Il peut également communiquer - ou autoriser les personnes agissant en son nom ou sous son autorité à communiquer - des renseignements soit dans le cadre des procédures intentées pour l'infraction visée à l'article 28 ou pour l'infraction visée à l'article 132 du *Code criminel* (parjure) se rapportant à une déclaration faite en vertu de la présente partie, soit

section 132 of the *Criminal Code* (perjury) in respect of a statement made under this Part;

(c) a hearing before the Court under this Part; or

(d) an appeal from a decision of the Court.

Disclosure of offence authorized

(5) The Commissioner may disclose to the Attorney General of Canada or of a province, as the case may be, information relating to the commission of an offence against any law of Canada or a province on the part of an officer or employee of an organization if, in the Commissioner's opinion, there is evidence of an offence.

[My emphasis.]

lors d'une audience de la Cour prévue par cette partie ou lors de l'appel de la décision rendue par celle-ci.

Dénonciation autorisée

(5) Dans les cas où, à son avis, il existe des éléments de preuve touchant la perpétration d'infractions au droit fédéral ou provincial par un cadre ou employé d'une organisation, le commissaire peut faire part au procureur général du Canada ou d'une province, selon le cas, des renseignements qu'il détient à cet égard.

[Je souligne.]

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKETS:** T-1587-11 and T-1588-11

**STYLE OF CAUSE:** TREVOR KNISS v THE PRIVACY COMMISSIONER OF CANADA

**PLACE OF HEARING:** Calgary, Alberta

**DATE OF HEARING:** November 22, 2012

**REASONS FOR JUDGMENT AND JUDGMENT:** NOËL J.

**DATED:** January 15, 2013

**APPEARANCES:**

Trevor Kniss FOR THE APPLICANT  
(ON HIS OWN BEHALF)

Regan Morris FOR THE RESPONDENT  
Steven Welchner

**SOLICITORS OF RECORD:**

Trevor Kniss FOR THE APPLICANT  
(ON HIS OWN BEHALF)

Office of the Privacy Commissioner of Canada FOR THE RESPONDENT  
Legal Services, Policy and Research Branch  
Ottawa, Ontario

Welchner Law Office  
Professional Corporation  
Ottawa, Ontario