

**FEDERAL COURT**

**IN THE MATTER OF a reference pursuant to subsection 18.3(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7 of questions or issues of law and jurisdiction concerning the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 that have arisen in the course of an investigation into a complaint before the Privacy Commissioner of Canada**

**B E T W E E N:**

**THE PRIVACY COMMISSIONER OF CANADA**

**APPLICANT**

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**MEMORANDUM OF FACT AND LAW OF THE INTERVENER,  
THE SAMUELSON-GLUSHKO CANADIAN INTERNET POLICY &  
PUBLIC INTEREST CLINIC**

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## OVERVIEW

1. *PIPEDA* applies to commercial search engines.
2. In order to determine whether personal information is collected, used or disclosed in the course of commercial activities under s. 4(1)(a) of *PIPEDA*, the Court must evaluate the relationship between that information and the organization’s business model. The commercial value of most Internet companies and social media platforms is derived by providing a free service to attract user’s time, attention and personal information, which is then monetized through advertising, tracking and profiling. A restrictive definition of “commercial activity” which includes nothing but discrete, revenue-generating interactions ignores precisely the kinds of business models that drive the digital economy and that *PIPEDA* was intended to regulate.
3. Whether the collection, use or disclosure of personal information is undertaken for exclusively “journalistic” purposes must be determined with reference to Parliament’s intent and the constitutional rationale for the exclusion set out in s. 4(2)(c) of *PIPEDA*. This analysis must account for the particular role played by a free, adversarial and independent press in a democratic society—through newsgathering, source protection, the exercise of professional discipline and editorial judgment, and a commitment to communication on matters of public interest. The fact that an organization happens to permit the dissemination or discovery of journalistic content through its platform is not sufficient to immunize its activities from scrutiny under *PIPEDA* as a whole. The Act and the *Charter* provide other safeguards in this respect.
4. The remedy sought by the Complainant has obvious implications for section 2(b) *Charter* rights and a conclusion that *PIPEDA* applies to commercial search engines may eventually raise other constitutional and policy questions. However, the rules of statutory interpretation do not permit the Court to preempt these debates by distorting the meaning of the Act’s application clause to exclude certain organizations from Canadian privacy regulation altogether. Appropriate and properly tailored constitutional remedies are available in the event that these concerns are well-founded in law and actually materialize.

## PART I - STATEMENT OF FACTS

5. CIPPIC takes no position on the facts.

## PART II - ISSUES

6. This reference raises two fundamental questions about *PIPEDA*'s scope and application:
  - a. Does Google, in the operation of its search engine service, collect, use or disclose personal information in the course of commercial activities within the meaning of paragraph 4(1)(a) of *PIPEDA* when it indexes web pages and presents search results in response to searches of an individual's name?
  - b. Is the operation of Google's search engine excluded from the application of Part 1 of *PIPEDA* by virtue of paragraph 4(2)(c) of *PIPEDA* because it involves the collection, use or disclosure of personal information for journalistic purposes and for no other purpose?

CIPPIC submits that the answer to the first question is “Yes” and the answer to the second question is “No”. The Act applies to the collection, use, and disclosure of personal information by Google in the operation of its search engine.

## PART III - SUBMISSIONS

### A. Personal data drives commercial value in the digital economy

7. If the Court interprets *PIPEDA* to exclude the collection, use, and disclosure of personal information by commercial search engines like Google, it would exempt some of the most significant modern e-commerce business models from *PIPEDA*'s protective scope. The digital economy—which includes everything from social media sites, email providers, mobile applications, gaming services, microblogging platforms, media subscription services, content sharing sites and more—is dominated by companies that generate commercial value by monetizing personal information. Finding that these activities lack a “commercial” character would shield some of the largest companies in the world from privacy law by analogy. Ironically, these practices are among those that pose the greatest threat to digital privacy and are precisely what *PIPEDA* was intended to regulate.
8. *PIPEDA* has been characterized as “consumer protection legislation for the digital economy.”<sup>1</sup> Yet many companies in this new economy do not generate revenue in a purely direct, transactional manner and often do not charge their users for the services they offer. Instead, their commercial value lies in the ability to provide compelling primary services for low or no cost in order to attract users' time, attention, and personal information. This allows these companies to maximize the data they accumulate for the

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<sup>1</sup> *Royal Bank of Canada v Trang*, 2016 SCC 50, 2 SCR 412, para 22.

purpose of selling targeted, personalized advertising. By acting as a platform for user activity, digital enterprises monitor their users' interactions with their service and each other, generating immense commercial value in the process. These services and activities are guided by the overarching objective of maximizing and monetizing data.

9. The Respondent has encouraged this Court to interpret *PIPEDA*'s threshold concept of "commercial activity" myopically. It suggests that search queries or discrete user interactions that do not lead to direct monetary compensation should be excluded from the wholesale application of the Act. Following this approach, whether personal information falls under *PIPEDA* would turn on dozens of variables evaluated on a query-by-query basis, like whether a search was conducted by an individual or a company, whether it was for someone's name as opposed to a local restaurant, whether the search algorithm returned results included news stories, and whether an advertisement was displayed or not. The Respondent's approach would also exclude core data handling practices from *PIPEDA*'s protective scope, ignoring the broader context in which personal information is collected, used and disclosed in the course of digital commerce.

**a. Commercial activity should be understood in relation to the business model**

10. Personal information is a high value commodity in the digital economy. Technology companies collect, use and disclose personal data across their businesses to generate revenue, develop new products and services, improve customer experiences and grow market share. Courts and regulators across the world and in a diversity of legal contexts have recognized that the accumulation of personal information is what drives business in the digital economy, and *PIPEDA* must account for that reality as well.
11. A search engine is the primary service offered by a commercial search company. Operating a search engine requires indiscriminately crawling, copying and indexing content contained on unrestricted online resources; receiving search queries from users; and analyzing the relationship between queries and indexed content to deliver online resources that are most responsive to the query.<sup>2</sup> Information about the searcher is collected, used, and analyzed to provide more tailored and personalized results. In the context of a search for an individual's name, previously collected and indexed personal information associated with that person is used and disclosed, transforming a collection of online sources into one central repository of information linked to a specific

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<sup>2</sup> Office of the Privacy Commissioner, Memorandum of Fact and Law, paras 16-27; Google LLC, Memorandum of Fact and Law, paras 14-19.

individual.<sup>3</sup> Without every single one of these elements—which can include collection, use, and disclosure of personal information about both the searcher and the subject—a search engine has no service to offer at all and, by extension, no commercial value.

12. Focusing on the commercial character of an individual search query in isolation ignores the business model underlying this form of digital commerce. While specific practices change by company and over time, the essence of this business model persists, and was captured by the European Commission in Case AT.40099:

Google's business model is based on the interaction between, on the one hand, online products and services it offers free of charge to users and, on the other hand, its online advertising services, from which it derives the majority of its revenues. ... Google also collects data via its products and services, such as Chrome, Google Maps, YouTube and Gmail. This ensures that Google receives a steady stream of user information that it can feed back into its search and search advertising business. ... The ability to collect and combine different valuable user data from its apps and services allows Google to strengthen its ability to present relevant search responses and relevant search advertisements.<sup>4</sup>

This business model incentivizes companies to collect data from every interaction across all their services, creating persistent profiles used to tailor and target advertisements.<sup>5</sup>

13. In addition to fueling the targeted advertising industry, users' personal information is commercially valuable because it is used to develop more addictive, effective, or engaging products and services which attract more users. Search algorithms learn how to provide better results by monitoring and mathematically studying how users generally search at scale.<sup>6</sup> Search responses are also improved through personalization based on an individual's specific data profile, including their location, their past search history, and other inferences drawn from their behaviour.<sup>7</sup>

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<sup>3</sup> Google, "How Search Algorithms Work", Affidavit of Nathalie Lachance, Sworn May 14, 2019, Exhibit S-9 [Lachance Affidavit].

<sup>4</sup> Case AT.40099, *Google Android*, C(2018)4761, July 18, 2018 (European Commission), paras 105-111.

<sup>5</sup> Case AT.40099, *Google Android*, C(2018)4761, July 18, 2018 (European Commission), paras 105-111; PIPEDA Report of Findings #2009-008, July 16, 2009, para 131: "Facebook has a different business model from organizations we have looked at to date. The site is free to users but not to Facebook, which needs the revenues from advertising in order to provide the service. ....advertising is essential to the provision of the service, and persons who wish to use the service must be willing to receive a certain amount of advertising."

<sup>6</sup> Google, "How Search Algorithms Work", Lachance Affidavit, p 87: "... to assess trustworthiness and authority on its subject matter, [these algorithms] look for sites that many users seem to value for similar queries."

<sup>7</sup> Google LLC, Memorandum of Fact and Law, para 66; Google, "How Search Algorithms Work", Lachance Affidavit, p 90: "Information such as your location, past search history and Search settings all help us to tailor your results to what is most useful and relevant for you in that moment.."



14. The ability to provide complete and responsive search results is central to a search engine's ability to attract users. For example, by including book excerpts in responses to general search queries, a search engine can "fortify its overall dominance of the Internet search market", even if no advertisements at all are placed on the dedicated Book Search service itself.<sup>8</sup> In this way, every indexed page, every search query and every click on a search result contributes to the commercial value of a search engine, regardless of whether an advertisement is immediately displayed or not. Better search results lead to a better product experience, attract more search queries, and generate more data, indirectly leading to greater market share and revenue.
15. Other types of digital companies operate on the basis of similar principles. For example, an entire industry uses software tracking tools called cookies to profile individuals across the various websites they visit for advertising purposes.<sup>9</sup> Tracking occurs regardless of whether a third party tracker's advertisement appears to the user or not.<sup>10</sup> Social media companies like Facebook analyze facial images in photos shared by their users with powerful biometric-enabled search tools to create a better product experience.<sup>11</sup> This facial recognition capability is not directly related to Facebook's advertising revenue, but its invasive potential is significant.<sup>12</sup> Companies like Clearview AI crawl the Internet to create a product that identifies people by matching facial images against those it has collected from sites across the Internet.<sup>13</sup> The privacy invasion begins when the image is collected, not when the company receives a payment or identifies a particular individual.
16. Corporate valuations increasingly recognize the diverse ways in which companies increase their commercial prospects by leveraging personal information to draw inferences about users and their preferences.<sup>14</sup> For example, subscription services like Netflix improve content recommendations and decide what content to curate by tracking

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<sup>8</sup> *Authors Guild v Google Inc.*, (2015) 804 F.3d 202 (United States, 2nd Circuit).

<sup>9</sup> Office of the Privacy Commissioner of Canada, "[Policy Position on Behavioural Advertising](#)", December 2015.

<sup>10</sup> United Kingdom, Information Commissioner's Office, "[Update Report into AdTech and Real Time Bidding](#)", June 20, 2019, pp 9-14: "This...process involves multiple organizations processing personal data on website users. Millions of bid requests are processed every second utilising automation, which involves the leveraging of multiple data sources into user profiles shared throughout the ecosystem".

<sup>11</sup> *Patel v Facebook Inc.*, Case No 18-15982 (9<sup>th</sup> Circuit, 2019) (Facebook's practices under Illinois law).

<sup>12</sup> *Patel v Facebook Inc.*, Case No 18-15982 (9<sup>th</sup> Circuit, 2019) (Facebook's practices under Illinois law).

<sup>13</sup> Office of the Privacy Commissioner of Canada, "[Commissioners Launch Joint Investigation into Clearview AI Amid Growing Concerns Over Use of Facial Recognition Technology](#)", February 21, 2020; Office of the Privacy Commissioner of Canada, "[Clearview AI Ceases Offering its Facial Recognition Technology in Canada](#)", July 6, 2020.

<sup>14</sup> Pricewaterhouse Coopers LLP, "[Putting a Value on Data](#)", (PricewaterhouseCoopers LLP, 2019).

and profiling their customers' activity.<sup>15</sup> Similarly, while Amazon's primary revenues are from products bought and sold on its platform, the company derives immense value from its ability to track user purchases in order to recommend products and adjust pricing.<sup>16</sup>

17. In short, whether the collection, use, and disclosure of personal information takes place "in the course of commercial activities" under s. 4(1)(a) should be determined with reference to the relationship between that information and the organization's larger business model. A narrow or fragmented approach to this analysis risks severely undermining privacy rights in Canada while exempting activities that lie at the core of the digital economy.

**b. Parliament intended *PIPEDA* to protect users in a data-driven economy**

18. *PIPEDA*'s primary objective is to instill trust and confidence in digital commerce by protecting individuals' privacy rights where organizations collect, use and disclose their personal information in the course of commercial activities.<sup>17</sup> *PIPEDA* is quasi-constitutional in nature and has a close nexus to the rights enshrined in the *Charter*, including the right to privacy and the values of autonomy, dignity, and informational self-determination that underpin it.<sup>18</sup> This quasi-constitutional character forms an integral component of the text, context and purpose of the Act.<sup>19</sup> An artificially narrow construction of s. 4(1)—*PIPEDA*'s application provision—would ignore the broader context in which personal information is collected, used, disclosed, and monetized in the course of digital commerce, and the threat those activities pose to these rights. It would also frustrate Parliament's intent in adopting *PIPEDA* by withdrawing protection from many of the situations where privacy is most at risk.
19. When Parliament enacted *PIPEDA*, it was aware of the threats to digital privacy posed by these new ways of doing business. For example, the Act was always intended to capture "software tracking agents" that prey on the "data trail" created when individuals browse the Internet.<sup>20</sup> *PIPEDA*'s own purpose clause situates the Act in "an era in which

<sup>15</sup> Pricewaterhouse Coopers LLP, "Putting a Value on Data", (PricewaterhouseCoopers LLP, 2019), pp 4 and 7.

<sup>16</sup> Lina M Khan, "Amazon's Antitrust Paradox", (2017) 126(3) Yale L J 710, pp 780-783.

<sup>17</sup> *PIPEDA*, s 3; House of Commons Debates, Vol 135, No 137, 36-1, Exhibit D.5, Ballott Affidavit, John Manley, p 9076: "Bill C-54 will help build the consumer trust and market certainty needed to ensure that Canada is a world leader in electronic commerce and the global information economy. Information privacy is crucial for a number of reasons....in the new information economy information is a valuable commodity....This reality....is creating mounting pressure to collect and use personal information more broadly than ever before....The legislation before us will....addresses both present and future challenges."

<sup>18</sup> *Bertucci v Royal Bank of Canada*, 2016 FC 332, para 20; *Alberta (Information and Privacy Commissioner) v United Food and Commercial Workers, Local 401*, 2012 SCC 62, [2013] 3 SCR 733, para 19.

<sup>19</sup> See e.g. *Royal Bank of Canada v Trang*, 2016 SCC 50, 2 SCR 412, para 36.

<sup>20</sup> INDY, 36-1, No 076, Exhibit D.5, Ballott Affidavit, Testimony of John Manley, at 1545: "...threats to privacy

technology increasingly facilitates the circulation and exchange of information”, further emphasizing the need to interpret the Act in light of emerging technological business models.<sup>21</sup> It would undermine trust in digital businesses and frustrate the legislator’s purpose if the Act’s protections applied selectively to some searches but not others, or if core functions of commercial services were excluded altogether from its protective scope. These are the very commercial activities *PIPEDA* was intended to regulate.

20. Nothing in *PIPEDA*’s definition section suggests that the phrase “in the course of commercial activities” is to be assessed on the specifics of each individual instance of collection, use, or disclosure.<sup>22</sup> The definition explicitly and clearly intends to capture more than discrete “particular transaction[s]” by also encompassing any “conduct or any regular course of conduct that is of a commercial character.” The French version of the Act, which makes reference to “Toute activité régulière ainsi que tout acte isolé qui revêtent un caractère commercial” and collection, use, or disclosure that takes place “dans le cadre d’activités commerciales” further clarifies this point. This definition was notably added to broaden *PIPEDA*’s application beyond the general activities of for-profit enterprises alone, ensuring that commercial activities of non-profits could also be covered.<sup>23</sup>
21. *PIPEDA* regulates the collection, use or disclosure of personal information for a multiplicity of ‘purposes’ that can have little relation to an organization’s revenue-generating activities but occur in the broader course of commercial conduct.<sup>24</sup> A bank providing a customer’s mortgage discharge statement to a creditor of the mortgaged property does so for the purpose of assisting in the sale of a seized property while deriving no commercial benefit at all.<sup>25</sup> A company disclosing customer information in response to law enforcement requests does so for the purpose of assisting criminal investigations, and

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are magnified in an electronic world. Every time...we surf the Internet and pick up software tracking agents, we leave a data trail. This trail can be compiled to provide a detailed record of our personal histories and preferences.”; INDY, 36-1, No 083, Exhibit D.5, Ballott Affidavit, Testimony of Michael Power, at 1635: “....this tracking question came up last year with respect to cookies....[it] is a question of informed consent.”

<sup>21</sup> *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 [PIPEDA], s 3.

<sup>22</sup> *PIPEDA*, s 2, “commercial activity” and s 4(1)(a); Google LLC, Memorandum of Fact and Law, para 33.

<sup>23</sup> INDY, 36-1, No 089, Exhibit D.5, Ballott Affidavit, Testimony of Ann Cavoukian, at 1555, 1634-35 and 1650: “Given the ever-widening scope of e-commerce, we support measures to ensure that personal information held by all organizations is covered by the legislative protections, regardless of whether the organization’s primary business is commercial in nature.”; House of Commons Debates, Vol 136, No 007, 36-2, Exhibit D.5, Ballott Affidavit, Susan Whelan, pp 419-420.

<sup>24</sup> *Englander v TELUS Communications Inc*, 2004 FCA 387, paras 42, 62 and 65-66.

<sup>25</sup> *Royal Bank of Canada v Trang*, 2016 SCC 50, 2 SCR 412, paras 46-49.

does not profit from the disclosure.<sup>26</sup> A company collecting a customer's personal information where a legal dispute is imminent does so for the purpose of litigation.<sup>27</sup>

22. Additionally, Parliament did not enact s. 4(1) with the intention of limiting *PIPEDA*'s protective scope. Instead, it sought to anchor the Act within its constitutional competence to legislate under its powers to regulate general trade and commerce power and federal undertakings.<sup>28</sup> The general trade and commerce power grants Parliament a broad right to adopt protective privacy and security measures that encourage trust and confidence in digital commerce.<sup>29</sup> *PIPEDA* provides rules governing transparency, data security, breach notification, information controls, and data accuracy precisely to achieve this objective.<sup>30</sup>
23. Many currently regulated practices may lose their protection if *PIPEDA* is defined too narrowly. For example, disclosure of a customer's contact details in a freely distributed phone book requires consent despite being a purpose secondary to a phone company's primary (paid) service.<sup>31</sup> An Internet Service Provider tracking which online applications its customers use for the purpose of speeding up or slowing down different types of traffic must be transparent—this customer data use occurs “in the course” of its service offering.<sup>32</sup> An operating system must ensure its privacy controls allow users to make meaningful choices regarding which third party applications can access their personal data and for what purposes.<sup>33</sup> An ad-supported “social search” browser plugin that enhances users' search queries must adopt adequate security safeguards when transmitting these queries to its own servers.<sup>34</sup> A company collecting information from millions of home WiFi routers in anticipation that this data might improve its geo-location services must have technical safeguards and a privacy management program in place to ensure it does

<sup>26</sup> *R v Chehil*, 2008 NSSC 357, paras 22-26; *R v Ward*, 2012 ONCA 660, paras 98-99; *R v Spencer*, 2014 SCC 43, para 63. Some costs may be recovered: *Rogers Communications Inc v Voltage Pictures LLC*, 2018 SCC 38.

<sup>27</sup> *Rousseau v Wyndowe*, 2006 FC 1312, paras 35-37, aff'd on other grounds, 2008 FCA 39; *Ferency v MCI Medical Clinics*, (2004) 70 OR (3d) 277, (ON SC), paras 25-30. Contrast *State Farm Mutual Automobile Insurance Company v Privacy Commissioner of Canada*, 2010 FC 736; *PIPEDA Case Summary #311*, August 9, 2005, cited with approval, *Royal Bank of Canada v Trang*, 2016 SCC 50, 2 SCR 412, para 44 (insurance company hiring private investigator to surveil plaintiff suing their client may imply consent).

<sup>28</sup> INDY, 36-1, No 076, Testimony of John Manley, at 1550: “Ideally, provinces and territories would pass similar legislation that would cover...personal information outside of the commercial realm.”

<sup>29</sup> 3510395 *Canada Inc v Canada (Attorney General)*, 2020 FCA 103, paras 95, 116-118, 168-169, and 184-185.

<sup>30</sup> House of Commons Debates, Vol 135, No 137, 36-1, Exhibit D.5, Ballott Affidavit, John Manley, p 9076.

<sup>31</sup> *Englander v TELUS Communications Inc*, 2004 FCA 387, paras 62 and 65-66.

<sup>32</sup> *PIPEDA Case Summary #2009-010*, September 3, 2009; *Wyndowe v Rousseau*, 2008 FCA 39, para 34.

<sup>33</sup> *PIPEDA Report of Findings #2018-004*, June 20, 2018. *PIPEDA Report of Findings #2009-008*, July 16, 2009, paras 184-214.

<sup>34</sup> *PIPEDA Report of Findings #2017-002*, August 17, 2017, paras 22-28, 37-38 and 185-191.

not accidentally collect private communications.<sup>35</sup> None of these examples involve direct commercial transaction. All occur in the course of commercial activities.

**B. Parliament’s intent and the exclusion’s constitutional rationale define the scope of “journalistic purposes”**

24. Commercial search engines do not collect, use, or disclose personal information for “journalistic” purposes within the meaning of s. 4(2)(c) of *PIPEDA*.
25. *Globe24h* provides a useful starting point for analysis under s. 4(2)(c). In that case, Justice Mosley adopted a set of criteria proposed by the Canadian Association of Journalists and concluded that activities which serve a “journalistic” purpose are ones which aim to inform the community on issues that the community values, involve an element of original production, and exhibit a “self-conscious discipline calculated to provide an accurate and fair description of facts, opinion and debate at play within a situation”.<sup>36</sup>
26. The meaning of “journalistic purposes” must also be understood with reference to Parliament’s intent and the constitutional rationale for adopting s. 4(2)(c). The legislative history reveals that both this provision and s. 7(1)(c) were included as an explicit response to concerns that any restriction on the press’ ability to collect, use, or disclose personal information would render the legislation vulnerable to *Charter* challenge.<sup>37</sup>
27. The jurisprudence surrounding the common law, statutory and s. 2(b) *Charter* protections for freedom of the press therefore help to illustrate the types of activities that Parliament intended to shelter from obligations under *PIPEDA*. To be clear, this is not an invitation for the Court to conduct a “*Charter* values” analysis with regard to s. 4(2)(c) of the Act.<sup>38</sup> Instead, CIPPIC simply submits that where Parliament creates a statutory exception for a specific constitutional reason, the scope of that constitutional right will necessarily inform the Court’s understanding of the exception’s context and purpose.
28. Journalistic activities attract special legal and constitutional protections because journalists play a unique role in “the existence and maintenance of a free and democratic society”.<sup>39</sup> By investigating and reporting in the public interest, journalists fill “a democratic deficit”,

<sup>35</sup> *Joff v Google Inc*, Case No 11-17483, (US, 9th Circ, 2013); PIPEDA Report of Findings #2011-001, May 20, 2011.

<sup>36</sup> *A.T. v Globe24h.com*, 2017 FC 114, para 68.

<sup>37</sup> INDY, 36-1, No 083, Exhibit D.5, Ballott Affidavit, Testimony of Anne McLellan, at 1615.

<sup>38</sup> *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42, [2002] 2 SCR 559, paras 64-66.

<sup>39</sup> *Denis v Côté*, 2019 SCC 44, para 45; *Canadian Broadcasting Corp v Lessard*, [1991] 3 SCR 421, p 444 (per Cory J); *R v National Post*, 2010 SCC 16, [2010] 1 SCR 477, paras 26, 64.

and help to hold powerful actors—whether public or private—to account.<sup>40</sup> A free, independent, and adversarial press is necessary to facilitate reasoned debate on matters of public significance. In this sense, the media’s right to gather and disseminate the news is a necessary corollary to the public’s own constitutional right to receive it.<sup>41</sup>

29. The Supreme Court has repeatedly confirmed that “[f]reedom of the press encompasses the ability of the media to gather information, maintain confidential relationships with journalistic sources and produce and publish news without fear of obstacles to their activities”.<sup>42</sup> In adopting s. 4(2)(c), it was these activities—newsgathering and publication—that Parliament sought to shelter from state interference.
30. The newsgathering process involves the *collection* and *use* of personal information—through primary research, interviews, access to confidential records, and reliance on anonymous sources. Without stringent legal and constitutional protection for these activities, “the free flow of information necessary to the media’s newsgathering function” would dry up.<sup>43</sup>
31. Publication, by contrast, involves the *disclosure* of personal information. The choices journalists make about what to publish are the result of editorial judgment, ethical deliberation, and the kind of “self-conscious discipline” described by Justice Mosley in *Globe24h.com*.<sup>44</sup> All restrictions on the publication and dissemination of news are carefully scrutinized—not only to protect against the corrosive effects of state censorship, but against the chill of private legal threats as well.<sup>45</sup> To achieve their critical public function, journalists are therefore entrusted with a certain professional latitude—though not an unlimited one—to balance privacy, security, reputation, and other countervailing factors against the public’s right to know.<sup>46</sup>
32. The extent to which an organization’s collection, use, and disclosure of personal information accords with established standards of professional journalistic ethics is therefore a strong indicator the activity has a “journalistic” purpose. While this may well

<sup>40</sup> *R v National Post*, 2010 SCC 16, [2010] 1 SCR 477, para 55.

<sup>41</sup> *R v National Post*, 2010 SCC 16, [2010] 1 SCR 477, para 28; *Canadian Broadcasting Corp v New Brunswick (Attorney General)*, [1996] 3 SCR 480, p 475; *Edmonton Journal v Alberta (Attorney General)*, [1989] 2 SCR 1326, pp 1339-1340; *Vancouver Sun (Re)*, [2004] 2 SCR 332, para 26.

<sup>42</sup> *Denis v Côté*, 2019 SCC 44, para 46.

<sup>43</sup> *R v National Post*, 2010 SCC 16, paras 28-29, 33; *R v Vice Media Canada Inc*, 2018 SCC 53, paras 26-27.

<sup>44</sup> *A.T. v Globe24h.com*, 2017 FC 114, para 68.

<sup>45</sup> *Grant v Torstar Corp*, 2009 SCC 61, para 53; *WIC Radio Ltd. v Simpson*, 2008 SCC 40, paras 2, 15.

<sup>46</sup> See generally *Grant v Torstar Corp*, 2009 SCC 61, paras 51, 58-59, 61-62, 65, 126.

encompass certain bloggers, public interest researchers, and citizen journalists, as an activity moves closer to “tabloid espionage” or “chequebook journalism”, its claim to a purely journalistic purpose under s. 4(2)(c) will tend to diminish.<sup>47</sup>

33. While Parliament did not adopt a definition of “journalist” in *PIPEDA*, recent amendments to the *Canada Evidence Act* support this view.<sup>48</sup> There, Parliament constrained the definition of a “journalist” to a particular professional class capable of safeguarding confidential and anonymous sources in the course of newsgathering. The Supreme Court has confirmed that this definition is fairly restrictive, though suggested that residual common law protections may continue to apply to individuals whose activities meet the *Wigmore* criteria but not the statutory definition.<sup>49</sup> The suggestion that a search engine would fall within the phrase “or anyone who assists such a person” under s. 39.1 of the Act is nearly impossible to square with the Court’s comments in *Denis*.
34. If anything, the *CEA* definition is likely to be somewhat narrower than what Parliament had in mind when adopting s. 4(2)(c), because of the requirements that journalistic activities be an individual’s “main occupation” and performed “for consideration”.<sup>50</sup> Indeed, a conclusion that the activities of a commercial search engine are sufficient to constitute “assistance” for the purpose of s. 39.1 *CEA* would suggest that confidential source protection should extend to every social media account, corner store, and airport lounge that sees fit to make a newspaper more widely available to their clientele.
35. In short, whether an organization’s purposes are “journalistic” should be determined with reference to Parliament’s overarching objective to protect the media’s constitutional right to gather and disseminate information on matters of public interest free from undue government interference. Where the collection, use, and disclosure of personal information is tightly linked to this objective, the activity will fall within the sphere of “journalistic” purposes. The more tenuous the connection becomes, the less likely it is that Parliament intended the activity to be immunized from *PIPEDA* in its entirety.
36. As discussed above, the primary reason that commercial search engines collect, use, and disclose personal information is to generate profit through advertising and product

<sup>47</sup> See *Grant v Torstar Corp*, 2009 SCC 61 para 97; *R v Vice Media Canada Inc*, 2018 SCC 53, para 129-130 (per Abella J, concurring); *R v National Post*, 2010 SCC 16, [2010] 1 SCR 477, para 38.

<sup>48</sup> *Canada Evidence Act*, RSC 1985, c. C-5, s. 39.1; *Denis v Côté*, 2019 SCC 44, para 27; *R v Vice Media Canada Inc*, 2018 SCC 53, para 6.

<sup>49</sup> *Denis v Côté*, 2019 SCC 44, paras 36-38.

<sup>50</sup> *Canada Evidence Act*, RSC 1985, c C-5, s. 39.1(1).

integration. The fact that news content is available on search engines does not mean that the search engine's own purposes are solely or even incidentally "journalistic" in nature.

37. Journalists are ultimately responsible for what they choose to publish.<sup>51</sup> Online intermediaries, by contrast, are generally sheltered from direct liability for the wrongful conduct of their users and of those whose content they reference by way of a hyperlink.<sup>52</sup> This indirect relationship to the underlying content means that an intermediary's obligations under *PIPEDA* may take on a character that is somewhat different from other organizations. At the jurisdictional stage however, an organization should not be entitled to disclaim all responsibility for this underlying content while simultaneously claiming the benefit of the law's protection for that same expression.
38. Indeed, when a search engine like Google links to newspaper articles, the company's purposes are no more "journalistic" than Amazon's purposes are "literary" when it sells books or Spotify's purposes are "artistic" when it distributes music. While the dissemination of news is entitled to s. 2(b) protection, the text of s. 4(2)(c) does not permit an organization to cloak itself in the motives of its users or of third party content creators in order to evade the wholesale application of Canadian privacy law.
39. Similarly, the fact that a commercial search engine can be used to facilitate newsgathering activities is irrelevant to the analysis of whether that organization's sole purposes under s. 4(2)(c) are "journalistic". This interpretation—beyond lacking any support in the text of the Act itself—would require courts to conduct a search-by-search analysis, interrogate the individual motives of website users to determine whether *PIPEDA* applies, and upend commercial certainty. A commercial search engine's purposes are no more "journalistic" when a user searches for news than they are educational, pornographic, or culinary when they search for a textbook, porn, or a new restaurant.
40. If Parliament had intended s. 4(2)(c) to extend to all expressive acts and purposes in a more general sense, it would have said so. Section 2(b) is "content neutral"<sup>53</sup> in that it protects hate speech and cigarette ads in the same manner that it protects literary works

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<sup>51</sup> *Grant v Torstar Corp*, 2009 SCC 6; INDY, 36-1, No 077, Exhibit D.5, Ballott Affidavit, Testimony of Michelle d'Auray, at 1555; INDY, 36-1, No 083, Exhibit D.5, Ballott Affidavit, Testimony of Anne McLellan, at 1615, 1620: "We have attempted to strike the balance between privacy and freedom of expression, but ....the normal laws of defamation apply."

<sup>52</sup> *Crookes v Newton*, 2011 SCC 47, [2011] 3 SCR 269; Law Commission of Ontario, "Defamation Law in the Internet Age", March 2020.

<sup>53</sup> *Canada (Attorney General) v JTI-Macdonald Corp*, 2007 SCC 30, para 60; *R v Keegstra*, [1990] 3 SCR 697, p 729.



and political theatre. However, not all forms of expression are entitled to equal legal protection under section 1 of the *Charter*, and the fact that s. 2(b) is engaged by legislation does not render the statute unconstitutional.

**C. The *Charter* is not infringed by applying *PIPEDA* to a commercial search engine**

41. The underlying complaint raises obvious s. 2(b) considerations. But Google goes further, claiming that “[t]he very act of finding that *PIPEDA* applies to Google searches for an individual’s name infringes section 2(b), as it purports to regulate expressive activity”.<sup>54</sup> This amounts to an argument that whether or not the OPC or the Federal Court actually exercise their statutory authority under *PIPEDA* in an unconstitutional manner, the mere possibility that they *might* threaten the constitutionality of the Act itself. Taken to its logical conclusion, Google’s position calls into question the constitutionality of all statutes that purport to delegate administrative or regulatory power, because there is always a possibility that those powers could be exercised unconstitutionally. This approach is, for obvious reasons, legally untenable.
42. In the event that the OPC’s power is exercised in an unconstitutional manner, an appropriate remedy flows from s. 24(1) of the *Charter*.<sup>55</sup> Moreover, and like all administrative actors, the OPC is bound by the Constitution and constrained by the oversight of this Court, which must also exercise its remedial jurisdiction in harmony with the *Charter* and is subject to appeal.<sup>56</sup> To the extent that the OPC’s actions or a remedy imposed by the Federal Court gives rise to a “chilling effect” on expressive activity, the Supreme Court has held in other contexts that such claims must be demonstrated on a case-by-case basis.<sup>57</sup>
43. Google also argues that if this Court concludes that it is subject to *PIPEDA*, certain provisions of the Act would be inconsistent with section 2(b) of the *Charter* when applied to the company’s search engine. In particular, Google suggests that *PIPEDA*’s consent requirements could be interpreted to impose an unconstitutional burden on its own company or other internet intermediaries.<sup>58</sup> Google’s position is not obvious in this

<sup>54</sup> Memorandum of Fact and Law of Google LLC, para 75.

<sup>55</sup> *Lemire v Canada (Human Rights Commission)*, 2014 FCA 18, para 46; *Schachter v Canada*, [1992] 2 SCR 679, pp 719-20.

<sup>56</sup> *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, paras 55-57; *Dagenais v Canadian Broadcasting Corp*, [1994] 3 SCR 835, pp 911-912; *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42, [2002] 2 SCR 559, para 61; *PIPEDA*, ss 14-17; *Federal Courts Act*, RSC 1985, c F-7, s 27.

<sup>57</sup> *R v Vice Media Canada Inc*, 2018 SCC 53, paras 28-29.

<sup>58</sup> Memorandum of Fact and Law of Google LLC, paras 78-82.

respect, but even if a court with jurisdiction to decide the issue eventually agreed, s. 52(1) of the *Constitution Act, 1982* would provide the appropriate remedy, rendering the impugned provisions of no force or effect to the extent of the inconsistency.<sup>59</sup>

44. Even then, there would be no reason to assume that such a conclusion would invalidate the constellation of other provisions that govern the treatment of personal information under *PIPEDA*—most of which fail to raise any discernible *Charter* issue at all—or that a court would follow the Supreme Court’s decision to invalidate the entire statutory scheme as in *UFCW*.<sup>60</sup> In any case, *UFCW* is of limited assistance on the constitutional question because its decision turned on the scope of *PIPA*’s particular consent provisions, rather than on whether the statute applied to the labour union in the first place.<sup>61</sup>
45. Many regulatory regimes in Canada and internationally include targeted exceptions to limit the conditions under which an intermediary (like a search engine, social media company, or Internet Service Provider) can be held liable for its users’ unlawful conduct. These rules also shape the ways in which different intermediaries can be enlisted to prevent illegal conduct from occurring on their respective platforms.<sup>62</sup> Courts have also read down certain legal rules to avoid holding intermediaries legally responsible for unlawful acts of others.<sup>63</sup> The underlying complaint does not allege that Google should be responsible for *PIPEDA* violations carried out by users of its search engine. However, it is important for the Court to understand that an organization’s particular status as an intermediary should be accounted for carefully, and in relation to specific legal obligations, not with respect to the Act’s jurisdiction-conferring application provision.<sup>64</sup>
46. Finally, and without conceding that these questions are properly within the scope of the reference question, this Court should be aware that *PIPEDA*’s protective provisions are to be applied in a reasonable and contextual manner.<sup>65</sup> For example, consent obligations can

<sup>59</sup> *Ontario (Attorney General) v G*, 2020 SCC 38, paras 84-86.

<sup>60</sup> *Alberta (Information and Privacy Commissioner) v United Food and Commercial Workers, Local 401*, 2012 SCC 62, [2013] 3 SCR 733, para 40; *Ontario (Attorney General) v G*, 2020 SCC 38, para 111.

<sup>61</sup> *Alberta (Information and Privacy Commissioner) v United Food and Commercial Workers, Local 401*, 2012 SCC 62, [2013] 3 SCR 733, paras 15-16.

<sup>62</sup> Memorandum of Fact and Law of Google LLC, at paras 33-35; *Society of Composers, Authors and Music Publishers of Canada v Canadian Assn of Internet Providers*, [2004] 1 SCR 427, 2004 SCC 45, para 131.

<sup>63</sup> *Crookes v Newton*, 2011 SCC 47, [2011] 3 SCR 269.

<sup>64</sup> *Society of Composers, Authors and Music Publishers of Canada v Canadian Assn of Internet Providers*, 2004 SCC 45, paras 42-43, 83-87, 92 and 120-131 (ISPs do not “telecommunicate copyright works to the public” but remain subject to the *Copyright Act*’s other provisions); Dara Lithwick & Maxime-Olivier Thibodeau, Legislative Summary: Bill C-11, April 20, 2012, *Library of Parliament*, Pub No 41-1-C11-E, pp 20 and s 3.2.3.

<sup>65</sup> *Royal Bank of Canada v Trang*, 2016 SCC 50, 2 SCR 412, paras 23 and 33-36; *Englander v TELUS*

be implied,<sup>66</sup> and the consequences of refusing consent will vary widely depending on the context.<sup>67</sup> Parliament has also encoded specific, targeted exceptions where it has deemed consent rights must yield to public policy considerations,<sup>68</sup> and continues to periodically add exceptions when the need arises.<sup>69</sup> It is in the context of these specific provisions and exceptions that courts and legislatures can best craft targeted solutions to address the public policy challenges raised by digital intermediaries.

47. In short, the modern approach to statutory interpretation does not permit a Court to interpret the scope of a provision granting jurisdiction more narrowly than the legislature intended simply to preclude the possibility that hypothetical constitutional or policy issues could eventually arise in relation to entirely different provisions of the Act. This position neither undermines the critical protections afforded by section 2(b), nor the reality that any remedy eventually arising from the Complaint would need to fully account for those protections.

#### **D. Conclusion**

48. The data-driven business models of the modern digital economy pose intrinsic risks to individuals' personal information and privacy rights. In enacting *PIPEDA*, Parliament was aware of those risks and intended the Act to offer meaningful protections against them. The jurisdictional limitation for journalistic purposes must be read in light of the unique legal protections that Canadian law affords press freedom and which justified that exception in the first place. The fact that constitutional or policy issues may arise in the context of specific obligations under *PIPEDA* does not entitle the Court to restrict the application of the entire statutory scheme.

### **PART IV - ORDER SOUGHT**

49. CIPPIC requests that no costs be awarded against it.

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*Communications Inc.*, 2004 FCA 387, para 46 (“flexibility, common sense and pragmatism will best guide the Court”); *Wansink v TELUS Communications Inc.*, 2007 FCA 21, paras 18-23.

<sup>66</sup> *PIPEDA* Case Summary #311, August 9, 2005, cited with approval, *Royal Bank of Canada v Trang*, 2016 SCC 50, para 44; *PIPEDA* Report of Findings #2014-013, October 31, 2014, cited with approval, *Royal Bank of Canada v Trang*, 2016 SCC 50, para 44 (a company can imply consent to disclose customer dispute details to an investigative journalist); and Elizabeth Denham, Assistant Privacy Commissioner of Canada, “Privacy and the Changing World of Maps”, October 15, 2009 *Remarks at the PIPA Conference 2009*.

<sup>67</sup> *PIPEDA* Report of Findings #2009-008, July 16, 2009, paras 130-134; *Wansink v TELUS Communications Inc.*, 2007 FCA 21, paras 28-32.

<sup>68</sup> *Wansink v TELUS Communications Inc.*, 2007 FCA 21, paras 21-23; *PIPEDA*, s 7; See also: 3510395 *Canada Inc v Canada (Attorney General)*, 2020 FCA 103, paras 157, 167 and 191-193.

<sup>69</sup> *Alberta (Information and Privacy Commissioner) v United Food and Commercial Workers, Local 401*, 2012 SCC 62, [2013] 3 SCR 733, para 40-41; *Personal Information Protection Amendment Act*, 2014, SA 2014 c 14; Dara Lithwick, Legislative Summary: Bill S-4, June 11, 2014, *Library of Parliament*, Pub No 41-2-S4-E, s 2.3.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24<sup>th</sup> day of November, 2020



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## PART V - AUTHORITIES

| <b>Legislation</b>         |                                                                                                                                                                                                                                                                                                                               |
|----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1                          | <i>Canada Evidence Act</i> , RSC 1985, c C-5<br><a href="https://laws-lois.justice.gc.ca/eng/acts/c-5/">https://laws-lois.justice.gc.ca/eng/acts/c-5/</a>                                                                                                                                                                     |
| 2                          | <i>Federal Courts Act</i> , RSC 1985, c F-7<br><a href="https://laws-lois.justice.gc.ca/eng/acts/f-7/">https://laws-lois.justice.gc.ca/eng/acts/f-7/</a>                                                                                                                                                                      |
| 3                          | <i>Personal Information Protection Amendment Act</i> , 2014, SA 2014 c 14<br><a href="https://docs.assembly.ab.ca/LADDAR_files/docs/bills/bill/legislature_28/session_3/20141117_bill-003.pdf">https://docs.assembly.ab.ca/LADDAR_files/docs/bills/bill/legislature_28/session_3/20141117_bill-003.pdf</a>                    |
| 4                          | <i>Personal Information Protection and Electronic Documents Act</i> , SC 2000, c 5<br><a href="https://laws-lois.justice.gc.ca/ENG/ACTS/P-8.6/index.html">https://laws-lois.justice.gc.ca/ENG/ACTS/P-8.6/index.html</a>                                                                                                       |
| <b>Legislative History</b> |                                                                                                                                                                                                                                                                                                                               |
| 5                          | House Standing Committee, INDY, 36-1, No 076, December 1, 1998, Testimony of John Manley, Minister of Industry<br><a href="https://www.ourcommons.ca/DocumentViewer/en/36-1/INDY/meeting-76/evidence">https://www.ourcommons.ca/DocumentViewer/en/36-1/INDY/meeting-76/evidence</a>                                           |
| 6                          | House Standing Committee, INDY, 36-1, No 077, December 2, 1998, Testimony of Michelle d'Auray, Electronic Commerce Task Force, Industry Canada<br><a href="https://www.ourcommons.ca/DocumentViewer/en/36-1/INDY/meeting-77/evidence">https://www.ourcommons.ca/DocumentViewer/en/36-1/INDY/meeting-77/evidence</a>           |
| 7                          | House Standing Committee, INDY, 36-1, No 083, February 3, 1999, Testimony of Anne McLellan, Minister of Justice & Attorney General of Canada<br><a href="https://www.ourcommons.ca/DocumentViewer/en/36-1/INDY/meeting-83/evidence">https://www.ourcommons.ca/DocumentViewer/en/36-1/INDY/meeting-83/evidence</a>             |
| 8                          | House Standing Committee, INDY, 36-1, No 083, February 3, 1999, Testimony of Michael Power, Interdepartmental PK1 Task Force, Treasury Board Secretariat<br><a href="https://www.ourcommons.ca/DocumentViewer/en/36-1/INDY/meeting-83/evidence">https://www.ourcommons.ca/DocumentViewer/en/36-1/INDY/meeting-83/evidence</a> |
| 9                          | House Standing Committee, INDY, 36-1, No 089, February 17, 1999, Testimony of Ann Cavoukian, Information and Privacy Commissioner of Ontario<br><a href="https://www.ourcommons.ca/DocumentViewer/en/36-1/INDY/meeting-89/evidence">https://www.ourcommons.ca/DocumentViewer/en/36-1/INDY/meeting-89/evidence</a>             |
| 10                         | House of Commons Debates, Vol 135, No 137, 36-1, October 19, 1998, John Manley, Minister of Industry<br><a href="https://www.ourcommons.ca/Content/House/361/Debates/137/han137-e.pdf">https://www.ourcommons.ca/Content/House/361/Debates/137/han137-e.pdf</a>                                                               |
| 11                         | House of Commons Debates, Vol 136, No 007, 36-2, October 20, 1999, Susan Whelan<br><a href="https://www.ourcommons.ca/Content/House/362/Debates/007/han007-e.pdf">https://www.ourcommons.ca/Content/House/362/Debates/007/han007-e.pdf</a>                                                                                    |
| <b>Jurisprudence</b>       |                                                                                                                                                                                                                                                                                                                               |
| 12                         | <i>3510395 Canada Inc v Canada (Attorney General)</i> , 2020 FCA 103<br><a href="https://decisions.fca-caf.gc.ca/fca-caf/decisions/en/item/480093/index.do">https://decisions.fca-caf.gc.ca/fca-caf/decisions/en/item/480093/index.do</a>                                                                                     |

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| 13 | <i>Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401</i> , 2013 SCC 62, [2013] 3 SCR 733<br><a href="https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13334/index.do">https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13334/index.do</a> |
| 14 | <i>A.T. v Globe24h.com</i> , 2017 FC 114<br><a href="https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/218338/index.do">https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/218338/index.do</a>                                                                                   |
| 15 | <i>Bell ExpressVu Limited Partnership v Rex</i> , 2002 SCC 42, [2002] 2 SCR 559<br><a href="https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1982/index.do">https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1982/index.do</a>                                                          |
| 16 | <i>Bertucci v Royal Bank of Canada</i> , 2016 FC 332<br><a href="https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/143068/index.do">https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/143068/index.do</a>                                                                       |
| 17 | <i>Canada (Attorney General) v JTI-Macdonald Corp</i> , 2007 SCC 30<br><a href="https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2369/index.do">https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2369/index.do</a>                                                                      |
| 18 | <i>Canada (Minister of Citizenship and Immigration) v Vavilov</i> , 2019 SCC 65<br><a href="https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/18078/index.do">https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/18078/index.do</a>                                                  |
| 19 | <i>Canadian Broadcasting Corp v Lessard</i> , [1991] 3 SCR 421<br><a href="https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/813/index.do">https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/813/index.do</a>                                                                             |
| 20 | <i>Canadian Broadcasting Corp v New Brunswick (Attorney General)</i> , [1996] 3 SCR 480<br><a href="https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1436/index.do">https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1436/index.do</a>                                                  |
| 21 | <i>Crookes v Newton</i> , [2011] 3 SCR 269, 2011 SCC 47<br><a href="https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7963/index.do">https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7963/index.do</a>                                                                                  |
| 22 | <i>Dagenais v Canadian Broadcasting Corp</i> , [1994] 3 SCR 835<br><a href="https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1204/index.do">https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1204/index.do</a>                                                                          |
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## APPENDIX A



CANADA

CONSOLIDATION

CODIFICATION

### Federal Courts Act

### Loi sur les Cours fédérales

R.S.C., 1985, c. F-7

L.R.C. (1985), ch. F-7

Current to November 2, 2020

À jour au 2 novembre 2020

Last amended on August 28, 2019

Dernière modification le 28 août 2019

## OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

### Published consolidation is evidence

**31 (1)** Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

### Inconsistencies in Acts

**(2)** In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

## LAYOUT

The notes that appeared in the left or right margins are now in boldface text directly above the provisions to which they relate. They form no part of the enactment, but are inserted for convenience of reference only.

## NOTE

This consolidation is current to November 2, 2020. The last amendments came into force on August 28, 2019. Any amendments that were not in force as of November 2, 2020 are set out at the end of this document under the heading “Amendments Not in Force”.

## CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1<sup>er</sup> juin 2009, prévoient ce qui suit :

### Codifications comme élément de preuve

**31 (1)** Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

### Incompatibilité — lois

**(2)** Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

## MISE EN PAGE

Les notes apparaissant auparavant dans les marges de droite ou de gauche se retrouvent maintenant en caractères gras juste au-dessus de la disposition à laquelle elles se rattachent. Elles ne font pas partie du texte, n'y figurant qu'à titre de repère ou d'information.

## NOTE

Cette codification est à jour au 2 novembre 2020. Les dernières modifications sont entrées en vigueur le 28 août 2019. Toutes modifications qui n'étaient pas en vigueur au 2 novembre 2020 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

(d) in relation to all mortgages or hypothecations of, or charges by way of security on, a ship, whether registered or not, or whether legal or equitable, and whether created under foreign law or not.

R.S., 1985, c. F-7, s. 22; 1993, c. 34, s. 69(F); 1996, c. 31, s. 82; 2002, c. 8, s. 31.

### **Bills of exchange and promissory notes — aeronautics and interprovincial works and undertakings**

**23** Except to the extent that jurisdiction has been otherwise specially assigned, the Federal Court has concurrent original jurisdiction, between subject and subject as well as otherwise, in all cases in which a claim for relief is made or a remedy is sought under an Act of Parliament or otherwise in relation to any matter coming within any of the following classes of subjects:

(a) bills of exchange and promissory notes, where the Crown is a party to the proceedings;

(b) aeronautics; and

(c) works and undertakings connecting a province with any other province or extending beyond the limits of a province.

R.S., 1985, c. F-7, s. 23; 2002, c. 8, s. 32.

**24** [Repealed, 2002, c. 8, s. 33]

### **Extraprovincial jurisdiction**

**25** The Federal Court has original jurisdiction, between subject and subject as well as otherwise, in any case in which a claim for relief is made or a remedy is sought under or by virtue of the laws of Canada if no other court constituted, established or continued under any of the *Constitution Acts, 1867 to 1982* has jurisdiction in respect of that claim or remedy.

R.S., 1985, c. F-7, s. 25; 2002, c. 8, s. 33.

### **General original jurisdiction**

**26** The Federal Court has original jurisdiction in respect of any matter, not allocated specifically to the Federal Court of Appeal, in respect of which jurisdiction has been conferred by an Act of Parliament on the Federal Court of Appeal, the Federal Court, the Federal Court of Canada or the Exchequer Court of Canada.

R.S., 1985, c. F-7, s. 26; 2002, c. 8, s. 33.

## **Jurisdiction of Federal Court of Appeal**

### **Appeals from Federal Court**

**27 (1)** An appeal lies to the Federal Court of Appeal from any of the following decisions of the Federal Court:

reconnus en droit ou en equity — , qu'ils relèvent du droit canadien ou du droit étranger.

L.R. (1985), ch. F-7, art. 22; 1993, ch. 34, art. 69(F); 1996, ch. 31, art. 82; 2002, ch. 8, art. 31.

### **Lettres de change et billets à ordre — Aéronautique et ouvrages interprovinciaux**

**23** Sauf attribution spéciale de cette compétence par ailleurs, la Cour fédérale a compétence concurrente, en première instance, dans tous les cas — opposant notamment des administrés — de demande de réparation ou d'autre recours exercé sous le régime d'une loi fédérale ou d'une autre règle de droit en matière :

a) de lettres de change et billets à ordre lorsque la Couronne est partie aux procédures;

b) d'aéronautique;

c) d'ouvrages reliant une province à une autre ou s'étendant au-delà des limites d'une province.

L.R. (1985), ch. F-7, art. 23; 2002, ch. 8, art. 32.

**24** [Abrogé, 2002, ch. 8, art. 33]

### **Compétence extra-provinciale**

**25** La Cour fédérale a compétence, en première instance, dans tous les cas — opposant notamment des administrés — de demande de réparation ou de recours exercé en vertu du droit canadien ne ressortissant pas à un tribunal constitué ou maintenu sous le régime d'une des *Lois constitutionnelles de 1867 à 1982*.

L.R. (1985), ch. F-7, art. 25; 2002, ch. 8, art. 33.

### **Tribunal de droit commun**

**26** La Cour fédérale a compétence, en première instance, pour toute question ressortissant aux termes d'une loi fédérale à la Cour d'appel fédérale, à la Cour fédérale, à la Cour fédérale du Canada ou à la Cour de l'Échiquier du Canada, à l'exception des questions expressément réservées à la Cour d'appel fédérale.

L.R. (1985), ch. F-7, art. 26; 2002, ch. 8, art. 33.

## **Compétence de la Cour d'appel fédérale**

### **Appels des jugements de la Cour fédérale**

**27 (1)** Il peut être interjeté appel, devant la Cour d'appel fédérale, des décisions suivantes de la Cour fédérale :

- (a) a final judgment;
- (b) a judgment on a question of law determined before trial;
- (c) an interlocutory judgment; or
- (d) a determination on a reference made by a federal board, commission or other tribunal or the Attorney General of Canada.

#### Appeals from Tax Court of Canada, except from informal procedure

(1.1) An appeal lies to the Federal Court of Appeal from

- (a) a final judgment of the Tax Court of Canada, other than one in respect of which section 18, 18.29, 18.3 or 18.3001 of the *Tax Court of Canada Act* applies;
- (b) a judgment of the Tax Court of Canada, other than one in respect of which section 18, 18.29, 18.3 or 18.3001 of the *Tax Court of Canada Act* applies, on a question of law determined before trial; or
- (c) an interlocutory judgment or order of the Tax Court of Canada, other than one in respect of which section 18, 18.29, 18.3 or 18.3001 of the *Tax Court of Canada Act* applies.

#### Appeals from informal procedure in Tax Court of Canada

(1.2) An appeal lies to the Federal Court of Appeal from a final judgment of the Tax Court of Canada in respect of which section 18, 18.29, 18.3 or 18.3001 of the *Tax Court of Canada Act* applies.

#### Grounds for appeal

(1.3) The only grounds for an appeal under subsection (1.2) are that the Tax Court of Canada

- (a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
- (b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;
- (c) erred in law in making a decision or an order, whether or not the error appears on the face of the record;
- (d) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;

- a) jugement définitif;
- b) jugement sur une question de droit rendu avant l'instruction;
- c) jugement interlocutoire;
- d) jugement sur un renvoi d'un office fédéral ou du procureur général du Canada.

#### Appels des jugements de la Cour canadienne de l'impôt

(1.1) Sauf s'il s'agit d'une décision portant sur un appel visé aux articles 18, 18.29, 18.3 ou 18.3001 de la *Loi sur la Cour canadienne de l'impôt*, il peut être interjeté appel, devant la Cour d'appel fédérale, des décisions suivantes de la Cour canadienne de l'impôt :

- a) jugement définitif;
- b) jugement sur une question de droit rendu avant l'instruction;
- c) jugement ou ordonnance interlocutoire.

#### Appel des décisions de la Cour canadienne de l'impôt — procédures informelles

(1.2) Il peut être interjeté appel, devant la Cour d'appel fédérale, d'un jugement définitif de la Cour canadienne de l'impôt portant sur un appel visé aux articles 18, 18.29, 18.3 ou 18.3001 de la *Loi sur la Cour canadienne de l'impôt*.

#### Motifs d'appel

(1.3) L'appel ne peut être interjeté aux termes du paragraphe (1.2) que pour l'un des motifs suivants :

- a) la Cour canadienne de l'impôt a agi sans compétence, outrepassé celle-ci ou refusé de l'exercer;
- b) elle n'a pas observé un principe de justice naturelle ou d'équité procédurale ou toute autre procédure qu'elle était légalement tenue de respecter;
- c) elle a rendu une décision ou une ordonnance entachée d'une erreur de droit, que celle-ci soit manifeste ou non au vu du dossier;
- d) elle a rendu une décision ou une ordonnance fondée sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments dont elle dispose;

(e) acted, or failed to act, by reason of fraud or perjured evidence; or

(f) acted in any other way that was contrary to law.

### Hearing in summary way

(1.4) An appeal under subsection (1.2) shall be heard and determined without delay and in a summary way.

### Notice of appeal

(2) An appeal under this section shall be brought by filing a notice of appeal in the Registry of the Federal Court of Appeal

(a) in the case of an interlocutory judgment, within 10 days after the pronouncement of the judgment or within any further time that a judge of the Federal Court of Appeal may fix or allow before or after the end of those 10 days; and

(b) in any other case, within 30 days, not including any days in July and August, after the pronouncement of the judgment or determination appealed from or within any further time that a judge of the Federal Court of Appeal may fix or allow before or after the end of those 30 days.

### Service

(3) All parties directly affected by an appeal under this section shall be served without delay with a true copy of the notice of appeal, and evidence of the service shall be filed in the Registry of the Federal Court of Appeal.

### Final judgment

(4) For the purposes of this section, a final judgment includes a judgment that determines a substantive right except as to any question to be determined by a referee pursuant to the judgment.

R.S., 1985, c. F-7, s. 27; R.S., 1985, c. 51 (4th Supp.), s. 11; 1990, c. 8, ss. 7, 78(E); 1993, c. 27, s. 214; 2002, c. 8, s. 34.

### Judicial review

**28 (1)** The Federal Court of Appeal has jurisdiction to hear and determine applications for judicial review made in respect of any of the following federal boards, commissions or other tribunals:

(a) [Repealed, 2012, c. 24, s. 86]

(b) the Review Tribunal continued by subsection 27(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*;

e) elle a agi ou omis d'agir en raison d'une fraude ou de faux témoignages;

f) elle a agi de toute autre façon contraire à la loi.

### Procédure sommaire

(1.4) L'appel interjeté en vertu du paragraphe (1.2) est entendu et tranché immédiatement et selon une procédure sommaire.

### Avis d'appel

(2) L'appel interjeté dans le cadre du présent article est formé par le dépôt d'un avis au greffe de la Cour d'appel fédérale, dans le délai imparti à compter du prononcé du jugement en cause ou dans le délai supplémentaire qu'un juge de la Cour d'appel fédérale peut, soit avant soit après l'expiration de celui-ci, accorder. Le délai imparti est de :

a) dix jours, dans le cas d'un jugement interlocutoire;

b) trente jours, compte non tenu de juillet et août, dans le cas des autres jugements.

### Signification

(3) L'appel est signifié sans délai à toutes les parties directement concernées par une copie certifiée conforme de l'avis. La preuve de la signification doit être déposée au greffe de la Cour d'appel fédérale.

### Jugement définitif

(4) Pour l'application du présent article, est assimilé au jugement définitif le jugement qui statue au fond sur un droit, à l'exception des questions renvoyées à l'arbitrage par le jugement.

L.R. (1985), ch. F-7, art. 27; L.R. (1985), ch. 51 (4<sup>e</sup> suppl.), art. 11; 1990, ch. 8, art. 7 et 78(A); 1993, ch. 27, art. 214; 2002, ch. 8, art. 34.

### Contrôle judiciaire

**28 (1)** La Cour d'appel fédérale a compétence pour connaître des demandes de contrôle judiciaire visant les offices fédéraux suivants :

a) [Abrogé, 2012, ch. 24, art. 86]

b) la commission de révision prorogée par le paragraphe 27(1) de la *Loi sur les sanctions administratives pécuniaires en matière d'agriculture et d'agroalimentaire*;

**(b.1)** the Conflict of Interest and Ethics Commissioner appointed under section 81 of the *Parliament of Canada Act*;

**(c)** the Canadian Radio-television and Telecommunications Commission established by the *Canadian Radio-television and Telecommunications Commission Act*;

**(d)** [Repealed, 2012, c. 19, s. 272]

**(e)** the Canadian International Trade Tribunal established by the *Canadian International Trade Tribunal Act*;

**(f)** the Canadian Energy Regulator established by the *Canadian Energy Regulator Act*;

**(g)** the Governor in Council, when the Governor in Council makes an order under subsection 186(1) of the *Canadian Energy Regulator Act*;

**(g)** the Appeal Division of the Social Security Tribunal established under section 44 of the *Department of Employment and Social Development Act*, unless the decision is made under subsection 57(2) or section 58 of that Act or relates to an appeal brought under subsection 53(3) of that Act or an appeal respecting a decision relating to further time to make a request under subsection 52(2) of that Act, section 81 of the *Canada Pension Plan*, section 27.1 of the *Old Age Security Act* or section 112 of the *Employment Insurance Act*;

**(h)** the Canada Industrial Relations Board established by the *Canada Labour Code*;

**(i)** the Federal Public Sector Labour Relations and Employment Board referred to in subsection 4(1) of the *Federal Public Sector Labour Relations and Employment Board Act*;

**(i.1)** adjudicators as defined in subsection 2(1) of the *Federal Public Sector Labour Relations Act*;

**(j)** the Copyright Board established by the *Copyright Act*;

**(k)** the Canadian Transportation Agency established by the *Canada Transportation Act*;

**(l)** [Repealed, 2002, c. 8, s. 35]

**(m)** [Repealed, 2012, c. 19, s. 272]

**(n)** the Competition Tribunal established by the *Competition Tribunal Act*;

**b.1)** le commissaire aux conflits d'intérêts et à l'éthique nommé en vertu de l'article 81 de la *Loi sur le Parlement du Canada*;

**c)** le Conseil de la radiodiffusion et des télécommunications canadiennes constitué par la *Loi sur le Conseil de la radiodiffusion et des télécommunications canadiennes*;

**d)** [Abrogé, 2012, ch. 19, art. 272]

**e)** le Tribunal canadien du commerce extérieur constitué par la *Loi sur le Tribunal canadien du commerce extérieur*;

**f)** la Régie canadienne de l'énergie constituée par la *Loi sur la Régie canadienne de l'énergie*;

**g)** le gouverneur en conseil, quand il prend un décret en vertu du paragraphe 186(1) de la *Loi sur la Régie canadienne de l'énergie*;

**g)** la division d'appel du Tribunal de la sécurité sociale, constitué par l'article 44 de la *Loi sur le ministère de l'Emploi et du Développement social*, sauf dans le cas d'une décision qui est rendue au titre du paragraphe 57(2) ou de l'article 58 de cette loi ou qui vise soit un appel interjeté au titre du paragraphe 53(3) de cette loi, soit un appel concernant une décision relative au délai supplémentaire visée au paragraphe 52(2) de cette loi, à l'article 81 du *Régime de pensions du Canada*, à l'article 27.1 de la *Loi sur la sécurité de la vieillesse* ou à l'article 112 de la *Loi sur l'assurance-emploi*;

**h)** le Conseil canadien des relations industrielles au sens du *Code canadien du travail*;

**i)** la Commission des relations de travail et de l'emploi dans le secteur public fédéral visée par le paragraphe 4(1) de la *Loi sur la Commission des relations de travail et de l'emploi dans le secteur public fédéral*;

**i.1)** les arbitres de grief, au sens du paragraphe 2(1) de la *Loi sur les relations de travail dans le secteur public fédéral*;

**j)** la Commission du droit d'auteur constituée par la *Loi sur le droit d'auteur*;

**k)** l'Office des transports du Canada constitué par la *Loi sur les transports au Canada*;

**l)** [Abrogé, 2002, ch. 8, art. 35]

**m)** [Abrogé, 2012, ch. 19, art. 272]

(o) assessors appointed under the *Canada Deposit Insurance Corporation Act*;

(p) [Repealed, 2012, c. 19, s. 572]

(q) the Public Servants Disclosure Protection Tribunal established by the *Public Servants Disclosure Protection Act*; and

(r) the Specific Claims Tribunal established by the *Specific Claims Tribunal Act*.

### Sections apply

(2) Sections 18 to 18.5, except subsection 18.4(2), apply, with any modifications that the circumstances require, in respect of any matter within the jurisdiction of the Federal Court of Appeal under subsection (1) and, when they apply, a reference to the Federal Court shall be read as a reference to the Federal Court of Appeal.

### Federal Court deprived of jurisdiction

(3) If the Federal Court of Appeal has jurisdiction to hear and determine a matter, the Federal Court has no jurisdiction to entertain any proceeding in respect of that matter.

R.S., 1985, c. F-7, s. 28; R.S., 1985, c. 30 (2nd Suppl.), s. 61; 1990, c. 8, s. 8; 1992, c. 26, s. 17, c. 33, s. 69, c. 49, s. 128; 1993, c. 34, s. 70; 1996, c. 10, s. 229, c. 23, s. 187; 1998, c. 26, s. 73; 1999, c. 31, s. 92(E); 2002, c. 8, s. 35; 2003, c. 22, ss. 167(E), 262; 2005, c. 46, s. 56.1; 2006, c. 9, ss. 6, 222; 2008, c. 22, s. 46; 2012, c. 19, ss. 110, 272, 572, c. 24, s. 86; 2013, c. 40, ss. 236, 439; 2014, c. 20, s. 236; 2017, c. 9, ss. 43, 55; 2019, c. 28, s. 102.

**29 to 35** [Repealed, 1990, c. 8, s. 8]

## Substantive Provisions

### Prejudgment interest — cause of action within province

**36 (1)** Except as otherwise provided in any other Act of Parliament, and subject to subsection (2), the laws relating to prejudgment interest in proceedings between subject and subject that are in force in a province apply to any proceedings in the Federal Court of Appeal or the Federal Court in respect of any cause of action arising in that province.

### Prejudgment interest — cause of action outside province

(2) A person who is entitled to an order for the payment of money in respect of a cause of action arising outside a province or in respect of causes of action arising in more than one province is entitled to claim and have included

n) le Tribunal de la concurrence constitué par la *Loi sur le Tribunal de la concurrence*;

o) les évaluateurs nommés en application de la *Loi sur la Société d'assurance-dépôts du Canada*;

p) [Abrogé, 2012, ch. 19, art. 572]

q) le Tribunal de la protection des fonctionnaires divulgateurs d'actes répréhensibles constitué par la *Loi sur la protection des fonctionnaires divulgateurs d'actes répréhensibles*;

r) le Tribunal des revendications particulières constitué par la *Loi sur le Tribunal des revendications particulières*.

### Dispositions applicables

(2) Les articles 18 à 18.5 s'appliquent, exception faite du paragraphe 18.4(2) et compte tenu des adaptations de circonstance, à la Cour d'appel fédérale comme si elle y était mentionnée lorsqu'elle est saisie en vertu du paragraphe (1) d'une demande de contrôle judiciaire.

### Incompétence de la Cour fédérale

(3) La Cour fédérale ne peut être saisie des questions qui relèvent de la Cour d'appel fédérale.

L.R. (1985), ch. F-7, art. 28; L.R. (1985), ch. 30 (2<sup>e</sup> suppl.), art. 61; 1990, ch. 8, art. 8; 1992, ch. 26, art. 17, ch. 33, art. 69, ch. 49, art. 128; 1993, ch. 34, art. 70; 1996, ch. 10, art. 229, ch. 23, art. 187; 1998, ch. 26, art. 73; 1999, ch. 31, art. 92(A); 2002, ch. 8, art. 35; 2003, ch. 22, art. 167(A) et 262; 2005, ch. 46, art. 56.1; 2006, ch. 9, art. 6 et 222; 2008, ch. 22, art. 46; 2012, ch. 19, art. 110, 272 et 572, ch. 24, art. 86; 2013, ch. 40, art. 236 et 439; 2014, ch. 20, art. 236; 2017, ch. 9, art. 43 et 55; 2019, ch. 28, art. 102.

**29 à 35** [Abrogés, 1990, ch. 8, art. 8]

## Dispositions de fond

### Intérêt avant jugement — Fait survenu dans une province

**36 (1)** Sauf disposition contraire de toute autre loi fédérale, et sous réserve du paragraphe (2), les règles de droit en matière d'intérêt avant jugement qui, dans une province, régissent les rapports entre particuliers s'appliquent à toute instance devant la Cour d'appel fédérale ou la Cour fédérale et dont le fait générateur est survenu dans cette province.

### Intérêt avant jugement — Fait non survenu dans une seule province

(2) Dans toute instance devant la Cour d'appel fédérale ou la Cour fédérale et dont le fait générateur n'est pas survenu dans une province ou dont les faits générateurs sont survenus dans plusieurs provinces, les intérêts avant



2014 Bill 3

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Third Session, 28th Legislature, 63 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 3**

## **PERSONAL INFORMATION PROTECTION AMENDMENT ACT, 2014**

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MR. QUADRI

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First Reading . . . . .

Second Reading . . . . .

Committee of the Whole . . . . .

Third Reading . . . . .

Royal Assent . . . . .

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*Bill 3*  
*Mr. Quadri*

## **BILL 3**

2014

### **PERSONAL INFORMATION PROTECTION AMENDMENT ACT, 2014**

*(Assented to                      , 2014)*

HER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of Alberta, enacts as follows:

#### **Amends SA 2003 cP-6.5**

**1** The *Personal Information Protection Act* is amended by this  
Act.

**2** Section 12 is amended by adding “14.1,” after “14,”.

**3** Section 14(l) is amended by striking out “section 15 or 22”  
and substituting “section 14.1, 15 or 22”.

**4** The following is added after section 14:

## Explanatory Notes

**1** Amends chapter P-6.5 of the Statutes of Alberta, 2003.

**2** Section 12 presently reads:

*12 An organization may without the consent of the individual collect personal information about an individual from a source other than that individual if the information that is to be collected is information that may be collected without the consent of the individual under section 14, 15 or 22.*

**3** Section 14(l) presently reads:

*14 An organization may collect personal information about an individual without the consent of that individual but only if one or more of the following are applicable:*

*(l) the collection of the information is in accordance with section 15 or 22.*

**4** Collection by a trade union relating to a labour dispute.

**Collection by a trade union relating to a labour dispute**

**14.1(1)** Subject to the regulations, a trade union may collect personal information about an individual without the consent of the individual for the purpose of informing or persuading the public about a matter of significant public interest or importance relating to a labour relations dispute involving the trade union if

- (a) the collection of the personal information is reasonably necessary for that purpose, and
- (b) it is reasonable to collect the personal information without consent for that purpose, taking into consideration all relevant circumstances, including the nature and sensitivity of the information.

**(2)** Nothing in this section is to be construed so as to restrict or otherwise affect a trade union's ability to collect personal information under section 14.

**5 Section 17(m) is amended by striking out "section 18 or 22" and substituting "section 17.1, 18 or 22".**

**6 The following is added after section 17:****Use by a trade union relating to a labour dispute**

**17.1(1)** Subject to the regulations, a trade union may use personal information about an individual without the consent of the individual for the purpose of informing or persuading the public about a matter of significant public interest or importance relating to a labour relations dispute involving the trade union if

- (a) the use of the personal information is reasonably necessary for that purpose, and

**5** Section 17(m) presently reads:

*17 An organization may use personal information about an individual without the consent of the individual but only if one or more of the following are applicable:*

- (m) the use of the information is in accordance with section 18 or 22.*

**6** Use by a trade union relating to a labour dispute.

- (b) it is reasonable to use the personal information without consent for that purpose, taking into consideration all relevant circumstances, including the nature and sensitivity of the information.

(2) Nothing in this section is to be construed so as to restrict or otherwise affect a trade union's ability to use personal information under section 17.

**7 Section 20(r) is amended by striking out “section 21 or 22” and substituting “section 20.1, 21 or 22”.**

**8 The following is added after section 20:**

**Disclosure by a trade union relating to a labour dispute**

**20.1(1)** Subject to the regulations, a trade union may disclose personal information about an individual without the consent of the individual for the purpose of informing or persuading the public about a matter of significant public interest or importance relating to a labour relations dispute involving the trade union if

- (a) the disclosure of the personal information is reasonably necessary for that purpose, and
- (b) it is reasonable to disclose the personal information without consent for that purpose, taking into consideration all relevant circumstances, including the nature and sensitivity of the information.

(2) Nothing in this section is to be construed so as to restrict or otherwise affect a trade union's ability to disclose personal information under section 20.

**9 Section 62 is amended**

**7** Section 20(r) presently reads:

*20 An organization may disclose personal information about an individual without the consent of the individual but only if one or more of the following are applicable:*

*(r) the disclosure is in accordance with section 21 or 22.*

**8** Disclosure by a trade union relating to a labour dispute.

**9** Section 62 presently reads in part:

*62(1) The Lieutenant Governor in Council may make regulations*

**(a) in subsection (1)****(i) by adding the following after clause (e):**

(e.1) respecting the collection, use and disclosure of personal information by trade unions under sections 14.1, 17.1 and 20.1;

**(ii) in clause (k) by striking out “section 14, 15, 17, 18, 20, 21 or 22” and substituting “section 14, 14.1, 15, 17, 17.1, 18, 20, 20.1, 21 or 22”;****(b) in subsection (2)(b)(i) and (ii) by striking out “section 14, 15, 17, 18, 20, 21 or 22” and substituting “section 14, 14.1, 15, 17, 17.1, 18, 20, 20.1, 21 or 22”.**



- (e) *governing the collection, use and disclosure of personal information for archival purposes or research and respecting requirements concerning archival purposes or research;*
  - (k) *prescribing or otherwise determining whether or not personal information or a specific type of personal information does or does not come within the meaning of a provision of section 14, 15, 17, 18, 20, 21 or 22 under which personal information may be collected, used or disclosed without the consent of the individual;*
- (2) *Where a regulation made*
- (b) *under subsection (1)(k) prescribes or otherwise determines that personal information*
    - (i) *comes within the meaning of a provision of section 14, 15, 17, 18, 20, 21 or 22, as the case may be, that information is to be treated in the same manner as any other personal information that is dealt with under that provision, or*
    - (ii) *does not come within the meaning of a provision of section 14, 15, 17, 18, 20, 21 or 22, as the case may be, that information is to be treated in the same manner as any other personal information that does not come within the meaning of that provision;*



CANADA

CONSOLIDATION

CODIFICATION

## Personal Information Protection and Electronic Documents Act

## Loi sur la protection des renseignements personnels et les documents électroniques

S.C. 2000, c. 5

L.C. 2000, ch. 5

Current to November 2, 2020

À jour au 2 novembre 2020

Last amended on June 21, 2019

Dernière modification le 21 juin 2019

## 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.

### Meaning of *should*

**(2)** The word *should*, when used in Schedule 1, indicates a recommendation and does not impose an obligation.

### Appropriate purposes

**(3)** An organization may collect, use or disclose personal information only for purposes that a reasonable person would consider are appropriate in the circumstances.

### Effect of designation of individual

**6** The designation of an individual under clause 4.1 of Schedule 1 does not relieve the organization of the obligation to comply with the obligations set out in that Schedule.

### Valid consent

**6.1** For the purposes of clause 4.3 of Schedule 1, the consent of an individual is only valid if it is reasonable to expect that an individual to whom the organization's activities are directed would understand the nature, purpose and consequences of the collection, use or disclosure of the personal information to which they are consenting.

2015, c. 32, s. 5.

### Collection without knowledge or consent

**7 (1)** For the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization may collect personal information without the knowledge or consent of the individual only if

- (a)** the collection is clearly in the interests of the individual and consent cannot be obtained in a timely way;
- (b)** it is reasonable to expect that the collection with the knowledge or consent of the individual would

## SECTION 1

# Protection des renseignements personnels

### Obligation de se conformer aux obligations

**5 (1)** Sous réserve des articles 6 à 9, toute organisation doit se conformer aux obligations énoncées dans l'annexe 1.

### Emploi du conditionnel

**(2)** L'emploi du conditionnel dans l'annexe 1 indique qu'il s'agit d'une recommandation et non d'une obligation.

### Fins acceptables

**(3)** L'organisation ne peut recueillir, utiliser ou communiquer des renseignements personnels qu'à des fins qu'une personne raisonnable estimerait acceptables dans les circonstances.

### Conséquence de la désignation d'une personne

**6** La désignation d'une personne en application de l'article 4.1 de l'annexe 1 n'exempte pas l'organisation des obligations énoncées dans cette annexe.

### Validité du consentement

**6.1** Pour l'application de l'article 4.3 de l'annexe 1, le consentement de l'intéressé n'est valable que s'il est raisonnable de s'attendre à ce qu'un individu visé par les activités de l'organisation comprenne la nature, les fins et les conséquences de la collecte, de l'utilisation ou de la communication des renseignements personnels auxquelles il a consenti.

2015, ch. 32, art. 5.

### Collecte à l'insu de l'intéressé ou sans son consentement

**7 (1)** Pour l'application de l'article 4.3 de l'annexe 1 et malgré la note afférente, l'organisation ne peut recueillir de renseignement personnel à l'insu de l'intéressé ou sans son consentement que dans les cas suivants :

- a)** la collecte du renseignement est manifestement dans l'intérêt de l'intéressé et le consentement ne peut être obtenu auprès de celui-ci en temps opportun;
- b)** il est raisonnable de s'attendre à ce que la collecte effectuée au su ou avec le consentement de l'intéressé compromette l'exactitude du renseignement ou l'accès à celui-ci, et la collecte est raisonnable à des fins liées

compromise the availability or the accuracy of the information and the collection is reasonable for purposes related to investigating a breach of an agreement or a contravention of the laws of Canada or a province;

**(b.1)** it is contained in a witness statement and the collection is necessary to assess, process or settle an insurance claim;

**(b.2)** it was produced by the individual in the course of their employment, business or profession and the collection is consistent with the purposes for which the information was produced;

**(c)** the collection is solely for journalistic, artistic or literary purposes;

**(d)** the information is publicly available and is specified by the regulations; or

**(e)** the collection is made for the purpose of making a disclosure

**(i)** under subparagraph (3)(c.1)(i) or (d)(ii), or

**(ii)** that is required by law.

#### Use without knowledge or consent

**(2)** For the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization may, without the knowledge or consent of the individual, use personal information only if

**(a)** in the course of its activities, the organization becomes aware of information that it has reasonable grounds to believe could be useful in the investigation of a contravention of the laws of Canada, a province or a foreign jurisdiction that has been, is being or is about to be committed, and the information is used for the purpose of investigating that contravention;

**(b)** it is used for the purpose of acting in respect of an emergency that threatens the life, health or security of an individual;

**(b.1)** the information is contained in a witness statement and the use is necessary to assess, process or settle an insurance claim;

**(b.2)** the information was produced by the individual in the course of their employment, business or profession and the use is consistent with the purposes for which the information was produced;

**(c)** it is used for statistical, or scholarly study or research, purposes that cannot be achieved without

à une enquête sur la violation d'un accord ou la contravention au droit fédéral ou provincial;

**b.1)** il s'agit d'un renseignement contenu dans la déclaration d'un témoin et dont la collecte est nécessaire en vue de l'évaluation d'une réclamation d'assurance, de son traitement ou de son règlement;

**b.2)** il s'agit d'un renseignement produit par l'intéressé dans le cadre de son emploi, de son entreprise ou de sa profession, et dont la collecte est compatible avec les fins auxquelles il a été produit;

**c)** la collecte est faite uniquement à des fins journalistiques, artistiques ou littéraires;

**d)** il s'agit d'un renseignement réglementaire auquel le public a accès;

**e)** la collecte est faite en vue :

**(i)** soit de la communication prévue aux sous-alinéas (3)c.1)(i) ou d)(ii),

**(ii)** soit d'une communication exigée par la loi.

#### Utilisation à l'insu de l'intéressé ou sans son consentement

**(2)** Pour l'application de l'article 4.3 de l'annexe 1 et malgré la note afférente, l'organisation ne peut utiliser de renseignement personnel à l'insu de l'intéressé ou sans son consentement que dans les cas suivants :

**a)** dans le cadre de ses activités, l'organisation découvre l'existence d'un renseignement dont elle a des motifs raisonnables de croire qu'il pourrait être utile à une enquête sur une contravention au droit fédéral, provincial ou étranger qui a été commise ou est en train ou sur le point de l'être, et l'utilisation est faite aux fins d'enquête;

**b)** l'utilisation est faite pour répondre à une situation d'urgence mettant en danger la vie, la santé ou la sécurité de tout individu;

**b.1)** il s'agit d'un renseignement contenu dans la déclaration d'un témoin et dont l'utilisation est nécessaire en vue de l'évaluation d'une réclamation d'assurance, de son traitement ou de son règlement;

**b.2)** il s'agit d'un renseignement produit par l'intéressé dans le cadre de son emploi, de son entreprise ou de sa profession, et dont l'utilisation est compatible avec les fins auxquelles il a été produit;

using the information, the information is used in a manner that will ensure its confidentiality, it is impracticable to obtain consent and the organization informs the Commissioner of the use before the information is used;

**(c.1)** it is publicly available and is specified by the regulations; or

**(d)** it was collected under paragraph (1)(a), (b) or (e).

### 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

**(a)** made to, in the Province of Quebec, an advocate or notary or, in any other province, a barrister or solicitor who is representing the organization;

**(b)** for the purpose of collecting a debt owed by the individual to the organization;

**(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;

**(c.1)** made to a government institution or part of a government institution that has made a request for the information, identified its lawful authority to obtain the information and indicated that

**(i)** it suspects that the information relates to national security, the defence of Canada or the conduct of international affairs,

**(ii)** the disclosure is requested for the purpose of enforcing any law of Canada, a province or a foreign jurisdiction, carrying out an investigation relating to the enforcement of any such law or gathering intelligence for the purpose of enforcing any such law,

**(iii)** the disclosure is requested for the purpose of administering any law of Canada or a province, or

**(iv)** the disclosure is requested for the purpose of communicating with the next of kin or authorized

**c)** l'utilisation est faite à des fins statistiques ou à des fins d'étude ou de recherche érudites, ces fins ne peuvent être réalisées sans que le renseignement soit utilisé, celui-ci est utilisé d'une manière qui en assure le caractère confidentiel, le consentement est pratiquement impossible à obtenir et l'organisation informe le commissaire de l'utilisation avant de la faire;

**c.1)** il s'agit d'un renseignement réglementaire auquel le public a accès;

**d)** le renseignement a été recueilli au titre des alinéas (1)a), b) ou e).

### Communication à l'insu de l'intéressé ou sans son consentement

**(3)** Pour l'application de l'article 4.3 de l'annexe 1 et malgré la note afférente, l'organisation ne peut communiquer de renseignement personnel à l'insu de l'intéressé ou sans son consentement que dans les cas suivants :

**a)** la communication est faite à un avocat — dans la province de Québec, à un avocat ou à un notaire — qui représente l'organisation;

**b)** elle est faite en vue du recouvrement d'une créance que celle-ci a contre l'intéressé;

**c)** elle est exigée par assignation, mandat ou ordonnance d'un tribunal, d'une personne ou d'un organisme ayant le pouvoir de contraindre à la production de renseignements ou exigée par des règles de procédure se rapportant à la production de documents;

**c.1)** elle est faite à une institution gouvernementale — ou à une subdivision d'une telle institution — qui a demandé à obtenir le renseignement en mentionnant la source de l'autorité légitime étayant son droit de l'obtenir et le fait, selon le cas :

**(i)** qu'elle soupçonne que le renseignement est afférent à la sécurité nationale, à la défense du Canada ou à la conduite des affaires internationales,

**(ii)** que la communication est demandée aux fins du contrôle d'application du droit canadien, provincial ou étranger, de la tenue d'enquêtes liées à ce contrôle d'application ou de la collecte de renseignements en matière de sécurité en vue de ce contrôle d'application,

**(iii)** qu'elle est demandée pour l'application du droit canadien ou provincial,

**(iv)** qu'elle est demandée afin d'entrer en contact avec le plus proche parent d'un individu blessé, malade ou décédé, ou avec son représentant autorisé;

representative of an injured, ill or deceased individual;

**(c.2)** made to the government institution mentioned in section 7 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* as required by that section;

**(d)** made on the initiative of the organization to a government institution or a part of a government institution and the organization

**(i)** has reasonable grounds to believe that the information relates to a contravention of the laws of Canada, a province or a foreign jurisdiction that has been, is being or is about to be committed, or

**(ii)** suspects that the information relates to national security, the defence of Canada or the conduct of international affairs;

**(d.1)** made to another organization and is reasonable for the purposes of investigating a breach of an agreement or a contravention of the laws of Canada or a province that has been, is being or is about to be committed and it is reasonable to expect that disclosure with the knowledge or consent of the individual would compromise the investigation;

**(d.2)** made to another organization and is reasonable for the purposes of detecting or suppressing fraud or of preventing fraud that is likely to be committed and it is reasonable to expect that the disclosure with the knowledge or consent of the individual would compromise the ability to prevent, detect or suppress the fraud;

**(d.3)** made on the initiative of the organization to a government institution, a part of a government institution or the individual's next of kin or authorized representative and

**(i)** the organization has reasonable grounds to believe that the individual has been, is or may be the victim of financial abuse,

**(ii)** the disclosure is made solely for purposes related to preventing or investigating the abuse, and

**(iii)** it is reasonable to expect that disclosure with the knowledge or consent of the individual would compromise the ability to prevent or investigate the abuse;

**(d.4)** necessary to identify the individual who is injured, ill or deceased, made to a government institution, a part of a government institution or the

**c.2)** elle est faite au titre de l'article 7 de la *Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes* à l'institution gouvernementale mentionnée à cet article;

**d)** elle est faite, à l'initiative de l'organisation, à une institution gouvernementale ou une subdivision d'une telle institution et l'organisation :

**(i)** soit a des motifs raisonnables de croire que le renseignement est afférent à une contravention au droit fédéral, provincial ou étranger qui a été commise ou est en train ou sur le point de l'être,

**(ii)** soit soupçonne que le renseignement est afférent à la sécurité nationale, à la défense du Canada ou à la conduite des affaires internationales;

**d.1)** elle est faite à une autre organisation et est raisonnable en vue d'une enquête sur la violation d'un accord ou sur la contravention au droit fédéral ou provincial qui a été commise ou est en train ou sur le point de l'être, s'il est raisonnable de s'attendre à ce que la communication effectuée au su ou avec le consentement de l'intéressé compromettrait l'enquête;

**d.2)** elle est faite à une autre organisation et est raisonnable en vue de la détection d'une fraude ou de sa suppression ou en vue de la prévention d'une fraude dont la commission est vraisemblable, s'il est raisonnable de s'attendre à ce que la communication effectuée au su ou avec le consentement de l'intéressé compromettrait la capacité de prévenir la fraude, de la détecter ou d'y mettre fin;

**d.3)** elle est faite, à l'initiative de l'organisation, à une institution gouvernementale ou à une subdivision d'une telle institution, au plus proche parent de l'intéressé ou à son représentant autorisé, si les conditions ci-après sont remplies :

**(i)** l'organisation a des motifs raisonnables de croire que l'intéressé a été, est ou pourrait être victime d'exploitation financière,

**(ii)** la communication est faite uniquement à des fins liées à la prévention de l'exploitation ou à une enquête y ayant trait,

**(iii)** il est raisonnable de s'attendre à ce que la communication effectuée au su ou avec le consentement de l'intéressé compromettrait la capacité de prévenir l'exploitation ou d'enquêter sur celle-ci;

**d.4)** elle est nécessaire aux fins d'identification de l'intéressé qui est blessé, malade ou décédé et est faite

individual's next of kin or authorized representative and, if the individual is alive, the organization informs that individual in writing without delay of the disclosure;

**(e)** made to a person who needs the information because of an emergency that threatens the life, health or security of an individual and, if the individual whom the information is about is alive, the organization informs that individual in writing without delay of the disclosure;

**(e.1)** of information that is contained in a witness statement and the disclosure is necessary to assess, process or settle an insurance claim;

**(e.2)** of information that was produced by the individual in the course of their employment, business or profession and the disclosure is consistent with the purposes for which the information was produced;

**(f)** for statistical, or scholarly study or research, purposes that cannot be achieved without disclosing the information, it is impracticable to obtain consent and the organization informs the Commissioner of the disclosure before the information is disclosed;

**(g)** made to an institution whose functions include the conservation of records of historic or archival importance, and the disclosure is made for the purpose of such conservation;

**(h)** made after the earlier of

**(i)** one hundred years after the record containing the information was created, and

**(ii)** twenty years after the death of the individual whom the information is about;

**(h.1)** of information that is publicly available and is specified by the regulations; or

**(h.2)** [Repealed, 2015, c. 32, s. 6]

**(i)** required by law.

#### Use without consent

**(4)** Despite clause 4.5 of Schedule 1, an organization may use personal information for purposes other than those for which it was collected in any of the circumstances set out in subsection (2).

#### Disclosure without consent

**(5)** Despite clause 4.5 of Schedule 1, an organization may disclose personal information for purposes other than

à une institution gouvernementale ou à une subdivision d'une telle institution, à un proche parent de l'intéressé ou à son représentant autorisé et, si l'intéressé est vivant, l'organisation en informe celui-ci par écrit et sans délai;

**e)** elle est faite à toute personne qui a besoin du renseignement en raison d'une situation d'urgence mettant en danger la vie, la santé ou la sécurité de toute personne et, dans le cas où la personne visée par le renseignement est vivante, l'organisation en informe par écrit et sans délai cette dernière;

**e.1)** il s'agit d'un renseignement contenu dans la déclaration d'un témoin et dont la communication est nécessaire en vue de l'évaluation d'une réclamation d'assurance, de son traitement ou de son règlement;

**e.2)** il s'agit d'un renseignement produit par l'intéressé dans le cadre de son emploi, de son entreprise, ou de sa profession, et dont la communication est compatible avec les fins auxquelles il a été produit;

**f)** la communication est faite à des fins statistiques ou à des fins d'étude ou de recherche érudites, ces fins ne peuvent être réalisées sans que le renseignement soit communiqué, le consentement est pratiquement impossible à obtenir et l'organisation informe le commissaire de la communication avant de la faire;

**g)** elle est faite à une institution dont les attributions comprennent la conservation de documents ayant une importance historique ou archivistique, en vue d'une telle conservation;

**h)** elle est faite cent ans ou plus après la constitution du document contenant le renseignement ou, en cas de décès de l'intéressé, vingt ans ou plus après le décès, dans la limite de cent ans;

**h.1)** il s'agit d'un renseignement réglementaire auquel le public a accès;

**h.2)** [Abrogé, 2015, ch. 32, art. 6]

**i)** la communication est exigée par la loi.

#### Utilisation sans le consentement de l'intéressé

**(4)** Malgré l'article 4.5 de l'annexe 1, l'organisation peut, dans les cas visés au paragraphe (2), utiliser un renseignement personnel à des fins autres que celles auxquelles il a été recueilli.

#### Communication sans consentement

**(5)** Malgré l'article 4.5 de l'annexe 1, l'organisation peut, dans les cas visés aux alinéas (3)a) à h.1), communiquer

those for which it was collected in any of the circumstances set out in paragraphs (3)(a) to (h.1).

2000, c. 5, s. 7, c. 17, s. 97; 2001, c. 41, s. 81; 2004, c. 15, s. 98; 2015, c. 32, s. 6.

## Definitions

**7.1 (1)** The following definitions apply in this section.

**access** means to program, to execute programs on, to communicate with, to store data in, to retrieve data from, or to otherwise make use of any resources, including data or programs on a computer system or a computer network. (*utiliser*)

**computer program** has the same meaning as in subsection 342.1(2) of the *Criminal Code*. (*programme d'ordinateur*)

**computer system** has the same meaning as in subsection 342.1(2) of the *Criminal Code*. (*ordinateur*)

**electronic address** means an address used in connection with

- (a) an electronic mail account;
- (b) an instant messaging account; or
- (c) any similar account. (*adresse électronique*)

## Collection of electronic addresses, etc.

**(2)** Paragraphs 7(1)(a) and (b.1) to (d) and (2)(a) to (c.1) and the exception set out in clause 4.3 of Schedule 1 do not apply in respect of

- (a) the collection of an individual's electronic address, if the address is collected by the use of a computer program that is designed or marketed primarily for use in generating or searching for, and collecting, electronic addresses; or
- (b) the use of an individual's electronic address, if the address is collected by the use of a computer program described in paragraph (a).

## Accessing a computer system to collect personal information, etc.

**(3)** Paragraphs 7(1)(a) to (d) and (2)(a) to (c.1) and the exception set out in clause 4.3 of Schedule 1 do not apply in respect of

- (a) the collection of personal information, through any means of telecommunication, if the collection is made by accessing a computer system or causing a

un renseignement personnel à des fins autres que celles auxquelles il a été recueilli.

2000, ch. 5, art. 7, ch. 17, art. 97; 2001, ch. 41, art. 81; 2004, ch. 15, art. 98; 2015, ch. 32, art. 6.

## Définitions

**7.1 (1)** Les définitions qui suivent s'appliquent au présent article.

**adresse électronique** Toute adresse utilisée relativement à l'un des comptes suivants :

- a) un compte courriel;
- b) un compte messagerie instantanée;
- c) tout autre compte similaire. (*electronic address*)

**ordinateur** S'entend au sens du paragraphe 342.1(2) du *Code criminel*. (*computer system*)

**programme d'ordinateur** S'entend au sens du paragraphe 342.1(2) du *Code criminel*. (*computer program*)

**utiliser** S'agissant d'un ordinateur ou d'un réseau informatique, le programmer, lui faire exécuter un programme, communiquer avec lui, y mettre en mémoire, ou en extraire, des données ou utiliser ses ressources de toute autre façon, notamment ses données et ses programmes. (*access*)

## Collecte, utilisation et communication d'adresses électroniques

**(2)** Les alinéas 7(1)a) et b.1) à d) et (2)a) à c.1) et l'exception prévue à l'article 4.3 de l'annexe 1 ne s'appliquent pas :

- a) à la collecte de l'adresse électronique d'un individu effectuée à l'aide d'un programme d'ordinateur conçu ou mis en marché principalement pour produire ou rechercher des adresses électroniques et les recueillir;
- b) à l'utilisation d'une telle adresse recueillie à l'aide d'un programme d'ordinateur visé à l'alinéa a).

## Collecte et utilisation de renseignements personnels

**(3)** Les alinéas 7(1)a) à d) et (2)a) à c.1) et l'exception prévue à l'article 4.3 de l'annexe 1 ne s'appliquent pas :

- a) à la collecte de renseignements personnels, par tout moyen de télécommunication, dans le cas où l'organisation qui y procède le fait en utilisant ou faisant



computer system to be accessed in contravention of an Act of Parliament; or

**(b)** the use of personal information that is collected in a manner described in paragraph (a).

2010, c. 23, s. 82; 2015, c. 32, s. 26.

### Prospective business transaction

**7.2 (1)** In addition to the circumstances set out in subsections 7(2) and (3), for the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, organizations that are parties to a prospective business transaction may use and disclose personal information without the knowledge or consent of the individual if

**(a)** the organizations have entered into an agreement that requires the organization that receives the personal information

**(i)** to use and disclose that information solely for purposes related to the transaction,

**(ii)** to protect that information by security safeguards appropriate to the sensitivity of the information, and

**(iii)** if the transaction does not proceed, to return that information to the organization that disclosed it, or destroy it, within a reasonable time; and

**(b)** the personal information is necessary

**(i)** to determine whether to proceed with the transaction, and

**(ii)** if the determination is made to proceed with the transaction, to complete it.

### Completed business transaction

**(2)** In addition to the circumstances set out in subsections 7(2) and (3), for the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, if the business transaction is completed, organizations that are parties to the transaction may use and disclose personal information, which was disclosed under subsection (1), without the knowledge or consent of the individual if

**(a)** the organizations have entered into an agreement that requires each of them

**(i)** to use and disclose the personal information under its control solely for the purposes for which the personal information was collected, permitted to be

utiliser un ordinateur en contravention d'une loi fédérale;

**b)** à l'utilisation de renseignements personnels dont la collecte est visée à l'alinéa a).

2010, ch. 23, art. 82; 2015, ch. 32, art. 26.

### Transaction commerciale éventuelle

**7.2 (1)** En plus des cas visés aux paragraphes 7(2) et (3), pour l'application de l'article 4.3 de l'annexe 1 et malgré la note afférente, les organisations qui sont parties à une éventuelle transaction commerciale peuvent utiliser et communiquer des renseignements personnels à l'insu de l'intéressé ou sans son consentement si, à la fois :

**a)** elles ont conclu un accord aux termes duquel l'organisation recevant des renseignements s'est engagée :

**(i)** à ne les utiliser et à ne les communiquer qu'à des fins liées à la transaction,

**(ii)** à les protéger au moyen de mesures de sécurité correspondant à leur degré de sensibilité,

**(iii)** si la transaction n'a pas lieu, à les remettre à l'organisation qui les lui a communiqués ou à les détruire, dans un délai raisonnable;

**b)** les renseignements sont nécessaires pour décider si la transaction aura lieu et, le cas échéant, pour l'effectuer.

### Transaction commerciale effectuée

**(2)** En plus des cas visés aux paragraphes 7(2) et (3), pour l'application de l'article 4.3 de l'annexe 1 et malgré la note afférente, si la transaction commerciale est effectuée, les organisations y étant parties peuvent utiliser et communiquer les renseignements personnels, communiqués en vertu du paragraphe (1), à l'insu de l'intéressé ou sans son consentement dans le cas où :

**a)** elles ont conclu un accord aux termes duquel chacune d'entre elles s'est engagée :

**(i)** à n'utiliser et ne communiquer les renseignements dont elle a la gestion qu'aux fins auxquelles ils ont été recueillis ou auxquelles il était permis de les utiliser ou de les communiquer avant que la transaction ne soit effectuée,

used or disclosed before the transaction was completed,

(ii) to protect that information by security safeguards appropriate to the sensitivity of the information, and

(iii) to give effect to any withdrawal of consent made under clause 4.3.8 of Schedule 1;

(b) the personal information is necessary for carrying on the business or activity that was the object of the transaction; and

(c) one of the parties notifies the individual, within a reasonable time after the transaction is completed, that the transaction has been completed and that their personal information has been disclosed under subsection (1).

#### Agreements binding

(3) An organization shall comply with the terms of any agreement into which it enters under paragraph (1)(a) or (2)(a).

#### Exception

(4) Subsections (1) and (2) do not apply to a business transaction of which the primary purpose or result is the purchase, sale or other acquisition or disposition, or lease, of personal information.

2015, c. 32, s. 7.

#### Employment relationship

**7.3** In addition to the circumstances set out in section 7, for the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, a federal work, undertaking or business may collect, use and disclose personal information without the consent of the individual if

(a) the collection, use or disclosure is necessary to establish, manage or terminate an employment relationship between the federal work, undertaking or business and the individual; and

(b) the federal work, undertaking or business has informed the individual that the personal information will be or may be collected, used or disclosed for those purposes.

2015, c. 32, s. 7.

#### Use without consent

**7.4 (1)** Despite clause 4.5 of Schedule 1, an organization may use personal information for purposes other than

(ii) à les protéger au moyen de mesures de sécurité correspondant à leur degré de sensibilité,

(iii) à donner effet à tout retrait de consentement fait en conformité avec l'article 4.3.8 de l'annexe 1;

b) les renseignements sont nécessaires à la poursuite de l'entreprise ou des activités faisant l'objet de la transaction;

c) dans un délai raisonnable après que la transaction a été effectuée, l'une des parties avise l'intéressé du fait que la transaction a été effectuée et que ses renseignements personnels ont été communiqués en vertu du paragraphe (1).

#### Valeur contraignante des accords

(3) L'organisation est tenue de se conformer aux modalités de tout accord conclu aux termes des alinéas (1)a) ou (2)a).

#### Exception

(4) Les paragraphes (1) et (2) ne s'appliquent pas à l'égard de la transaction commerciale dont l'objectif premier ou le résultat principal est l'achat, la vente ou toute autre forme d'acquisition ou de disposition de renseignements personnels, ou leur location.

2015, ch. 32, art. 7.

#### Relation d'emploi

**7.3** En plus des cas visés à l'article 7, pour l'application de l'article 4.3 de l'annexe 1 et malgré la note afférente, une entreprise fédérale peut recueillir, utiliser ou communiquer des renseignements personnels sans le consentement de l'intéressé si cela est nécessaire pour établir ou gérer la relation d'emploi entre elle et lui, ou pour y mettre fin, et si elle a au préalable informé l'intéressé que ses renseignements personnels seront ou pourraient être recueillis, utilisés ou communiqués à ces fins.

2015, ch. 32, art. 7.

#### Utilisation sans le consentement de l'intéressé

**7.4 (1)** Malgré l'article 4.5 de l'annexe 1, l'organisation peut, dans les cas visés aux paragraphes 7.2(1) ou (2) ou à

those for which it was collected in any of the circumstances set out in subsection 7.2(1) or (2) or section 7.3.

#### **Disclosure without consent**

**(2)** Despite clause 4.5 of Schedule 1, an organization may disclose personal information for purposes other than those for which it was collected in any of the circumstances set out in subsection 7.2(1) or (2) or section 7.3.

2015, c. 32, s. 7.

#### **Written request**

**8 (1)** A request under clause 4.9 of Schedule 1 must be made in writing.

#### **Assistance**

**(2)** An organization shall assist any individual who informs the organization that they need assistance in preparing a request to the organization.

#### **Time limit**

**(3)** An organization shall respond to a request with due diligence and in any case not later than thirty days after receipt of the request.

#### **Extension of time limit**

**(4)** An organization may extend the time limit

**(a)** for a maximum of thirty days if

**(i)** meeting the time limit would unreasonably interfere with the activities of the organization, or

**(ii)** the time required to undertake any consultations necessary to respond to the request would make the time limit impracticable to meet; or

**(b)** for the period that is necessary in order to be able to convert the personal information into an alternative format.

In either case, the organization shall, no later than thirty days after the date of the request, send a notice of extension to the individual, advising them of the new time limit, the reasons for extending the time limit and of their right to make a complaint to the Commissioner in respect of the extension.

#### **Deemed refusal**

**(5)** If the organization fails to respond within the time limit, the organization is deemed to have refused the request.

#### **Costs for responding**

**(6)** An organization may respond to an individual's request at a cost to the individual only if

l'article 7.3, utiliser un renseignement personnel à des fins autres que celles auxquelles il a été recueilli.

#### **Communication sans le consentement de l'intéressé**

**(2)** Malgré l'article 4.5 de l'annexe 1, l'organisation peut, dans les cas visés aux paragraphes 7.2(1) ou (2) ou à l'article 7.3, communiquer un renseignement personnel à des fins autres que celles auxquelles il a été recueilli.

2015, ch. 32, art. 7.

#### **Demande écrite**

**8 (1)** La demande prévue à l'article 4.9 de l'annexe 1 est présentée par écrit.

#### **Aide à fournir**

**(2)** Sur requête de l'intéressé, l'organisation fournit à celui-ci l'aide dont il a besoin pour préparer sa demande.

#### **Délai de réponse**

**(3)** L'organisation saisie de la demande doit y donner suite avec la diligence voulue et, en tout état de cause, dans les trente jours suivant sa réception.

#### **Prorogation du délai**

**(4)** Elle peut toutefois proroger le délai visé au paragraphe (3) :

**a)** d'une période maximale de trente jours dans les cas où :

**(i)** l'observation du délai entraverait gravement l'activité de l'organisation,

**(ii)** toute consultation nécessaire pour donner suite à la demande rendrait pratiquement impossible l'observation du délai;

**b)** de la période nécessaire au transfert des renseignements visés sur support de substitution.

Dans l'un ou l'autre cas, l'organisation envoie au demandeur, dans les trente jours suivant la demande, un avis de prorogation l'informant du nouveau délai, des motifs de la prorogation et de son droit de déposer auprès du commissaire une plainte à propos de la prorogation.

#### **Présomption**

**(5)** Faute de répondre dans le délai, l'organisation est réputée avoir refusé d'acquiescer à la demande.

#### **Coût**

**(6)** Elle ne peut exiger de droits pour répondre à la demande que si, à la fois, elle informe le demandeur du

### Notice

**(5)** If an organization decides not to give access to personal information in the circumstances set out in paragraph (3)(c.1), the organization shall, in writing, so notify the Commissioner, and shall include in the notification any information that the Commissioner may specify.

2000, c. 5, s. 9, c. 17, s. 97; 2001, c. 41, s. 82; 2005, c. 46, s. 57; 2006, c. 9, s. 223; 2015, c. 32, s. 9; 2019, c. 18, s. 61.

### Sensory disability

**10** An organization shall give access to personal information in an alternative format to an individual with a sensory disability who has a right of access to personal information under this Part and who requests that it be transmitted in the alternative format if

- (a)** a version of the information already exists in that format; or
- (b)** its conversion into that format is reasonable and necessary in order for the individual to be able to exercise rights under this Part.

## DIVISION 1.1

### Breaches of Security Safeguards

#### Report to Commissioner

**10.1 (1)** An organization shall report to the Commissioner any breach of security safeguards involving personal information under its control if it is reasonable in the circumstances to believe that the breach creates a real risk of significant harm to an individual.

#### Report requirements

**(2)** The report shall contain the prescribed information and shall be made in the prescribed form and manner as soon as feasible after the organization determines that the breach has occurred.

#### Notification to individual

**(3)** Unless otherwise prohibited by law, an organization shall notify an individual of any breach of security safeguards involving the individual's personal information under the organization's control if it is reasonable in the circumstances to believe that the breach creates a real risk of significant harm to the individual.

#### Contents of notification

**(4)** The notification shall contain sufficient information to allow the individual to understand the significance to

### Avis

**(5)** Si elle décide de ne pas communiquer les renseignements dans le cas visé à l'alinéa (3)c.1), l'organisation en avise par écrit le commissaire et lui fournit les renseignements qu'il peut préciser.

2000, ch. 5, art. 9, ch. 17, art. 97; 2001, ch. 41, art. 82; 2005, ch. 46, art. 57; 2006, ch. 9, art. 223; 2015, ch. 32, art. 9; 2019, ch. 18, art. 61.

### Déficiences sensorielle

**10** L'organisation communique les renseignements personnels sur support de substitution à toute personne ayant une déficience sensorielle qui y a droit sous le régime de la présente partie et qui en fait la demande, dans les cas suivants :

- a)** une version des renseignements visés existe déjà sur un tel support;
- b)** leur transfert sur un tel support est raisonnable et nécessaire pour que la personne puisse exercer les droits qui lui sont conférés sous le régime de la présente partie.

## SECTION 1.1

### Atteintes aux mesures de sécurité

#### Déclaration au commissaire

**10.1 (1)** L'organisation déclare au commissaire toute atteinte aux mesures de sécurité qui a trait à des renseignements personnels dont elle a la gestion, s'il est raisonnable de croire, dans les circonstances, que l'atteinte présente un risque réel de préjudice grave à l'endroit d'un individu.

#### Modalités de la déclaration

**(2)** La déclaration contient les renseignements prévus par règlement et est faite, selon les modalités réglementaires, le plus tôt possible après que l'organisation a conclu qu'il y a eu atteinte.

#### Avis à l'intéressé

**(3)** À moins qu'une règle de droit ne l'interdise, l'organisation est tenue d'aviser l'intéressé de toute atteinte aux mesures de sécurité qui a trait à des renseignements personnels le concernant et dont elle a la gestion, s'il est raisonnable de croire, dans les circonstances, que l'atteinte présente un risque réel de préjudice grave à son endroit.

#### Contenu de l'avis

**(4)** L'avis contient suffisamment d'information pour permettre à l'intéressé de comprendre l'importance, pour

them of the breach and to take steps, if any are possible, to reduce the risk of harm that could result from it or to mitigate that harm. It shall also contain any other prescribed information.

#### Form and manner

(5) The notification shall be conspicuous and shall be given directly to the individual in the prescribed form and manner, except in prescribed circumstances, in which case it shall be given indirectly in the prescribed form and manner.

#### Time to give notification

(6) The notification shall be given as soon as feasible after the organization determines that the breach has occurred.

#### Definition of significant harm

(7) For the purpose of this section, **significant harm** includes bodily harm, humiliation, damage to reputation or relationships, loss of employment, business or professional opportunities, financial loss, identity theft, negative effects on the credit record and damage to or loss of property.

#### Real risk of significant harm — factors

(8) The factors that are relevant to determining whether a breach of security safeguards creates a real risk of significant harm to the individual include

- (a) the sensitivity of the personal information involved in the breach;
- (b) the probability that the personal information has been, is being or will be misused; and
- (c) any other prescribed factor.

2015, c. 32, s. 10.

#### Notification to organizations

**10.2 (1)** An organization that notifies an individual of a breach of security safeguards under subsection 10.1(3) shall notify any other organization, a government institution or a part of a government institution of the breach if the notifying organization believes that the other organization or the government institution or part concerned may be able to reduce the risk of harm that could result from it or mitigate that harm, or if any of the prescribed conditions are satisfied.

lui, de l'atteinte et de prendre, si cela est possible, des mesures pour réduire le risque de préjudice qui pourrait en résulter ou pour atténuer un tel préjudice. Il contient aussi tout autre renseignement réglementaire.

#### Modalités de l'avis

(5) L'avis est manifeste et est donné à l'intéressé directement, selon les modalités réglementaires. Dans les circonstances prévues par règlement, il est donné indirectement, selon les modalités réglementaires.

#### Délai de l'avis

(6) L'avis est donné le plus tôt possible après que l'organisation a conclu qu'il y a eu atteinte.

#### Définition de préjudice grave

(7) Pour l'application du présent article, **préjudice grave** vise notamment la lésion corporelle, l'humiliation, le dommage à la réputation ou aux relations, la perte financière, le vol d'identité, l'effet négatif sur le dossier de crédit, le dommage aux biens ou leur perte, et la perte de possibilités d'emploi ou d'occasions d'affaires ou d'activités professionnelles.

#### Risque réel de préjudice grave : facteurs

(8) Les éléments servant à établir si une atteinte aux mesures de sécurité présente un risque réel de préjudice grave à l'endroit de l'intéressé sont notamment le degré de sensibilité des renseignements personnels en cause, la probabilité que les renseignements aient été mal utilisés ou soient en train ou sur le point de l'être et tout autre élément prévu par règlement.

2015, ch. 32, art. 10.

#### Avis à une organisation

**10.2 (1)** L'organisation qui, en application du paragraphe 10.1(3), avise un individu d'une atteinte aux mesures de sécurité est tenue d'en aviser toute autre organisation, ou toute institution gouvernementale ou subdivision d'une telle institution, si elle croit que l'autre organisation, l'institution ou la subdivision peut être en mesure de réduire le risque de préjudice pouvant résulter de l'atteinte ou d'atténuer ce préjudice, ou s'il est satisfait à des conditions précisées par règlement.

### Time to give notification

**(2)** The notification shall be given as soon as feasible after the organization determines that the breach has occurred.

### Disclosure of personal information

**(3)** In addition to the circumstances set out in subsection 7(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 if

**(a)** the disclosure is made to the other organization, the government institution or the part of a government institution that was notified of the breach under subsection (1); and

**(b)** the disclosure is made solely for the purposes of reducing the risk of harm to the individual that could result from the breach or mitigating that harm.

### Disclosure without consent

**(4)** Despite clause 4.5 of Schedule 1, an organization may disclose personal information for purposes other than those for which it was collected in the circumstance set out in subsection (3).

2015, c. 32, s. 10.

### Records

**10.3 (1)** An organization shall, in accordance with any prescribed requirements, keep and maintain a record of every breach of security safeguards involving personal information under its control.

### Provision to Commissioner

**(2)** An organization shall, on request, provide the Commissioner with access to, or a copy of, a record.

2015, c. 32, s. 10.

## DIVISION 2

## Remedies

### Filing of Complaints

#### Contravention

**11 (1)** An individual may file with the Commissioner a written complaint against an organization for contravening a provision of Division 1 or 1.1 or for not following a recommendation set out in Schedule 1.

### Délai de l'avis

**(2)** Elle le fait le plus tôt possible après avoir conclu qu'il y a eu atteinte.

### Communication de renseignements personnels

**(3)** En plus des cas visés au paragraphe 7(3), pour l'application de l'article 4.3 de l'annexe 1 et malgré la note afférente, l'organisation peut communiquer des renseignements personnels à l'insu de l'intéressé ou sans son consentement si :

**a)** d'une part, la communication est faite à l'autre organisation, ou à l'institution gouvernementale ou la subdivision d'une telle institution qui a été avisée de l'atteinte en application du paragraphe (1);

**b)** d'autre part, elle n'est faite que pour réduire le risque de préjudice pour l'intéressé qui pourrait résulter de l'atteinte ou atténuer ce préjudice.

### Communication sans consentement

**(4)** Malgré l'article 4.5 de l'annexe 1, l'organisation peut, dans le cas visé au paragraphe (3), communiquer un renseignement personnel à des fins autres que celles auxquelles il a été recueilli.

2015, ch. 32, art. 10.

### Registre

**10.3 (1)** L'organisation tient et conserve, conformément aux règlements, un registre de toutes les atteintes aux mesures de sécurité qui ont trait à des renseignements personnels dont elle a la gestion.

### Accès au registre ou copie

**(2)** Sur demande du commissaire, l'organisation lui donne accès à son registre ou lui en remet copie.

2015, ch. 32, art. 10.

## SECTION 2

## Recours

### Dépôt des plaintes

#### Violation

**11 (1)** Tout intéressé peut déposer auprès du commissaire une plainte contre une organisation qui contrevient à l'une des dispositions des sections 1 ou 1.1, ou qui omet de mettre en œuvre une recommandation énoncée dans l'annexe 1.

*Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act or section 52.01 of the Competition Act or would constitute conduct that is reviewable under section 74.011 of that Act.*

### Notification

**(3)** The Commissioner shall notify the complainant and the organization that the investigation has been discontinued and give reasons.

2010, c. 23, s. 83; 2015, c. 32, s. 12.

## 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.

2000, c. 5, s. 13; 2010, c. 23, s. 84.

## 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

*réglementation de certaines pratiques qui découragent l'exercice des activités commerciales par voie électronique et modifiant la Loi sur le Conseil de la radiodiffusion et des télécommunications canadiennes, la Loi sur la concurrence, la Loi sur la protection des renseignements personnels et les documents électroniques et la Loi sur les télécommunications ou à l'article 52.01 de la Loi sur la concurrence ou un comportement susceptible d'examen visé à l'article 74.011 de cette loi.*

### Avis aux parties

**(3)** Le commissaire avise le plaignant et l'organisation de la fin de l'examen et des motifs qui la justifient.

2010, ch. 23, art. 83; 2015, ch. 32, art. 12.

## 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 œuvre 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.

2000, ch. 5, art. 13; 2010, ch. 23, art. 84.

## Audience de la Cour

### 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

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.

### Time for application

**(2)** A complainant shall make an application within one year after the report or notification is sent or within any longer period that the Court may, either before or after the expiry of that year, allow.

### 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).

2000, c. 5, s. 14; 2010, c. 23, s. 85; 2015, c. 32, s. 13.

### 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.

### 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.

2000, c. 5, s. 16; 2015, c. 32, s. 14.

l'annexe 1, aux articles 4.3, 4.5 ou 4.9 de cette annexe tels qu'ils sont modifiés ou clarifiés par les sections 1 ou 1.1, aux paragraphes 5(3) ou 8(6) ou (7), à l'article 10 ou à la section 1.1.

### Délai de la demande

**(2)** La demande est faite dans l'année suivant la transmission du rapport ou de l'avis ou dans le délai supérieur que la Cour autorise avant ou après l'expiration de l'année.

### 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).

2000, ch. 5, art. 14; 2010, ch. 23, art. 85; 2015, ch. 32, art. 13.

### 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.

### Réparations

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

**a)** ordonner à l'organisation de revoir ses pratiques en vue de se conformer aux sections 1 et 1.1;

**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.

2000, ch. 5, art. 16; 2015, ch. 32, art. 14.



### 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.

## Compliance Agreements

### Compliance agreement

**17.1 (1)** If the Commissioner believes on reasonable grounds that an organization has committed, is about to commit or is likely to commit an act or omission that could constitute a contravention of a provision of Division 1 or 1.1 or a failure to follow a recommendation set out in Schedule 1, the Commissioner may enter into a compliance agreement, aimed at ensuring compliance with this Part, with that organization.

### Terms

**(2)** A compliance agreement may contain any terms that the Commissioner considers necessary to ensure compliance with this Part.

### Effect of compliance agreement — no application

**(3)** When a compliance agreement is entered into, the Commissioner, in respect of any matter covered under the agreement,

**(a)** shall not apply to the Court for a hearing under subsection 14(1) or paragraph 15(a); and

**(b)** shall apply to the court for the suspension of any pending applications that were made by the Commissioner under those provisions.

### For greater certainty

**(4)** For greater certainty, a compliance agreement does not preclude

**(a)** an individual from applying for a hearing under section 14; or

### 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.

## Accord de conformité

### Conclusion d'un accord de conformité

**17.1 (1)** Le commissaire peut, s'il a des motifs raisonnables de croire à l'existence, à l'imminence ou à la probabilité d'un fait — acte ou omission — pouvant constituer une contravention à l'une des dispositions des sections 1 ou 1.1 ou une omission de mettre en œuvre une recommandation énoncée dans l'annexe 1, conclure avec l'organisation intéressée un accord, appelé « accord de conformité », visant à faire respecter la présente partie.

### Conditions

**(2)** L'accord de conformité est assorti des conditions que le commissaire estime nécessaires pour faire respecter la présente partie.

### Effet de l'accord de conformité

**(3)** Lorsqu'un accord de conformité a été conclu, le commissaire :

**a)** ne peut demander à la Cour, aux termes du paragraphe 14(1) ou de l'alinéa 15a), une audition à l'égard de toute question visée par l'accord;

**b)** demande la suspension de toute demande d'audition d'une question visée par l'accord qu'il a faite et qui est pendante au moment de la conclusion de l'accord.

### Précision

**(4)** Il est entendu que la conclusion de l'accord n'a pas pour effet d'empêcher les poursuites pour infraction à la présente loi, ou d'empêcher un plaignant — autre que le

**(b)** the prosecution of an offence under the Act.

2015, c. 32, s. 15.

### Agreement complied with

**17.2 (1)** If the Commissioner is of the opinion that a compliance agreement has been complied with, the Commissioner shall provide written notice to that effect to the organization and withdraw any applications that were made under subsection 14(1) or paragraph 15(a) in respect of any matter covered under the agreement.

### Agreement not complied with

**(2)** If the Commissioner is of the opinion that an organization is not complying with the terms of a compliance agreement, the Commissioner shall notify the organization and may apply to the Court for

**(a)** an order requiring the organization to comply with the terms of the agreement, in addition to any other remedies it may give; or

**(b)** a hearing under subsection 14(1) or paragraph 15(a) or to reinstate proceedings that have been suspended as a result of an application made under paragraph 17.1(3)(b).

### Time for application

**(3)** Despite subsection 14(2), the application shall be made within one year after notification is sent or within any longer period that the Court may, either before or after the expiry of that year, allow.

2015, c. 32, s. 15.

## DIVISION 3

### Audits

#### To ensure compliance

**18 (1)** The Commissioner may, on reasonable notice and at any reasonable time, audit the personal information management practices of an organization if the Commissioner has reasonable grounds to believe that the organization has contravened a provision of Division 1 or 1.1 or is not following a recommendation set out in Schedule 1, and for that purpose 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 for the audit, in the same manner and to the same extent as a superior court of record;

commissaire — de faire une demande d'audition de la question aux termes de l'article 14.

2015, ch. 32, art. 15.

### Accord respecté

**17.2 (1)** S'il estime que l'accord de conformité a été respecté, le commissaire en fait part à l'organisation intéressée par avis écrit et il retire toute demande d'audition, faite aux termes du paragraphe 14(1) ou de l'alinéa 15a), d'une question visée par l'accord.

### Accord non respecté

**(2)** S'il estime que l'accord de conformité n'a pas été respecté, le commissaire envoie à l'organisation intéressée un avis de défaut. Il peut alors demander à la Cour :

**a)** soit une ordonnance enjoignant à l'organisation de se conformer aux conditions de l'accord de conformité, en sus de toute autre réparation que la Cour peut accorder;

**b)** soit une audition de la question, aux termes du paragraphe 14(1) ou de l'alinéa 15a) ou, en cas de suspension de l'audition à la suite d'une demande faite en application de l'alinéa 17.1(3)b), le rétablissement de l'audition.

### Délai de la demande

**(3)** Malgré le paragraphe 14(2), la demande est faite dans l'année suivant l'envoi de l'avis de défaut ou dans le délai supérieur que la Cour autorise avant ou après l'expiration de l'année.

2015, ch. 32, art. 15.

## SECTION 3

### Vérifications

#### Contrôle d'application

**18 (1)** Le commissaire peut, sur préavis suffisant et à toute heure convenable, procéder à la vérification des pratiques de l'organisation en matière de gestion des renseignements personnels s'il a des motifs raisonnables de croire que celle-ci a contrevenu à l'une des dispositions des sections 1 ou 1.1 ou n'a pas mis en œuvre une recommandation énoncée dans l'annexe 1; il a, à cette fin, le pouvoir :

**a)** d'assigner et de contraindre des témoins à comparaître devant lui, à déposer verbalement ou par écrit sous la foi du serment et à produire les documents ou

**IN THE MATTER OF** a reference pursuant to subsection 18.3(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7 of questions or issues of law and jurisdiction concerning the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 that have arisen in the course of an investigation into a complaint before the Privacy Commissioner of Canada

**THE PRIVACY COMMISSIONER OF CANADA**  
(APPLICANT)

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**FEDERAL COURT**

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**MEMORANDUM OF FACT AND LAW OF THE INTERVENER,  
THE SAMEULSON-GLUSHKO CANADIAN INTERNET POLICY &  
PUBLIC INTEREST CLINIC**

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