

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE COURT OF APPEAL OF SASKATCHEWAN)

BETWEEN:

MATTHEW DAVID SPENCER

Appellant
(Appellant/Respondent)

- and -

HER MAJESTY THE QUEEN

Respondent
(Respondent/Appellant)

- and -

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PURSUANT TO RULE 42 OF *RULES OF THE SUPREME COURT OF CANADA*

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FACTUM OF THE INTERVENER

PART I – OVERVIEW AND FACTS

Overview

1. When Detective Sergeant Parisien sent his request for a customer's name and address to Shaw, did he "search" anything? He did not enter any place, look through any files, or seize any documents. He did not make any observations or direct anyone to make an observation for him. He asked a witness a question. The witness chose to answer.
2. Essentially, the Appellant argues that Detective Sergeant Parisien's question was a search for two reasons: because its target was information about the home, and because Shaw owed the Appellant a duty of confidence at a level meriting constitutional protection. Neither aspect of this argument should be accepted.
3. Fundamentally, the goal of every step in a criminal investigation is to gain information. If "information" in any form may be the subject of a search, then literally every police inquiry will be subject to a search analysis. If asking an internet service provider (ISP) for customer name and address is a search, then so is virtually every other inquiry made of an institutional witness. To characterize this routine police inquiry as a "search" would be a major departure from existing jurisprudence, with unacceptable consequences for law enforcement.

Facts

4. The Attorney General of Alberta (Alberta) takes no position on the facts of the case.

PART II – ISSUES

5. This intervention addresses only the Appellant's first issue: Is there a reasonable expectation of privacy in the information attached to an IP address?¹ Alberta adopts the Respondent's position that the "information" at issue is customer name and address only, and that the police inquiry was not a search.
6. Alberta's further position, developed in this factum, is that a search analysis should not apply to verbal inquiries. Rare exceptions may arise within communicative relationships that

¹ Appellant's Factum at paras 4, 38

society would sedulously foster; where information was communicated in exchange for a promise of confidentiality; and where maintaining the confidence would not harm the interests of the information-holder.

PART III – ARGUMENT

Not all information-gathering should trigger a search analysis

7. Alberta does not accept the Appellant’s framing of “the subject matter of the search” as “information about activities in the home”. The information the police sought was customer name and address, nothing more. The larger point, however, is that a traditional “search” analysis should not apply to pure information, divorced from any kind of physical intrusion.

8. Police may obtain information by observation or by inquiry. For example, in *R v Gendreau*,² the complainant informed the police that, after inviting her into his home, Mr. Gendreau pushed her onto a plastic-wrapped mattress, raped her, bound her with duct tape and handcuffs, and raped her twice more. Thus, the police gained information about very personal activities in his home that Mr. Gendreau would no doubt have preferred to keep private from the state.³ Nonetheless, obtaining this information from a witness, in the form of words, was not a search. The search came later, when police entered the home and were able to make their own observations of the mattress, duct tape and handcuffs.⁴ A police inquiry does not become a search merely because its target is highly personal information.

9. Intuitively, one “searches” a person or a place for a thing⁵ -- though the boundaries of this intuitive sense are being challenged. In *R v Tessling*, this Court introduced the concept of “informational privacy”.⁶ Over the next five years, the language of the analysis changed: rather than “the subject matter” of the alleged search, the focus became “the informational content of the subject matter”.⁷

² *R v Gendreau*, 2011 CarswellAlta 1637 (CA) [Tab 9]

³ *R v Patrick*, [2009] 1 SCR 579; 2009 CarswellAlta 481 (SCC) at para 32 [Tab 14]

⁴ *R v Gendreau*, 2011 CarswellAlta 1637 (CA) at paras 2-8, 15 [Tab 9]. Cf *R v Buhay*, [2003] 1 SCR 631 [Not reproduced]

⁵ eg *Criminal Code*, RSC 1985, c C-46, s 487(1); *Hunter c Southam Inc*, [1984] 2 SCR 145 at p 157-158 [Tab 4]

⁶ *R v Tessling*, [2004] 3 SCR 432, 2004 CarswellOnt 4351 (SCC) at paras 20, 23 [Tab 15]

⁷ *R v Tessling*, [2004] 3 SCR 432, 2004 CarswellOnt 4351 (SCC) at para 32 [Tab 15]; *R v Patrick*, [2009] 1 SCR 579; 2009 CarswellAlta 481 (SCC) at para 27 [Tab 14]

10. But that language has not extended “search” to encompass any inquiry for information. “Search” remains rooted in state observations of tangible things and places. For instance, *Tessling* involved infrared observations emanating from a house, and *Patrick* involved information in items in a garbage can⁸. In *R v Cole*, the subject matter of the search analysis was the informational content of the computer – not just the physical computer, and not just the informational content. When witnesses informed police what they had seen on the computer, no search analysis was triggered. The concept of “search” applied when the police made their own direct observations of the computer itself: “any non-consensual *examination by the state* was a ‘search’.”⁹

11. Though our intuitive understanding of “search” is evolving, a unifying theme remains: a search generally requires *direct state access* to information with some physical origin.

Not all confidences merit constitutional protection

12. As usual, there is an exception. In *R v Dersch*,¹⁰ a doctor disclosed medical information to police without first obtaining Mr. Dersch’s consent. He thereby violated his common law duty of confidentiality and the police violated s 8 of the *Charter*.¹¹ The doctor-patient relationship is a fiduciary one, a “special relationship of trust” within which a “patient chooses to share intimate details about his or her life”. In equity it was considered on par with spousal or solicitor-client relationships¹² – both relationships that attract legal privilege.¹³

13. The “informational fiduciary” characterisation is a unique one. More commonly, claims to legally-recognized confidence are analysed under the framework of privilege. In raising this comparison, Alberta is not attempting to apply the law of privilege directly to the facts at bar. However, the policies and practicalities of privilege can usefully inform the analysis of a confidence-based search claim.

⁸ *R v Tessling*, [2004] 3 SCR 432, 2004 CarswellOnt 4351 (SCC) [Tab 15]; *R v Patrick*, [2009] 1 SCR 579, 2009 CarswellAlta 481 (SCC) [Tab 14]

⁹ *R v Cole*, [2012] 3 SCR 34, 2012 CarswellOnt 12684 (SCC) at paras 34, 41, 59, 73, emphasis added. Witnesses made an exact digital copy of the computer’s hard drive; examining the copy would be the functional equivalent of examining the original. Therefore the same legal treatment applied to both: see eg at paras 96-97 [Tab 7]

¹⁰ *R v Dersch*, [1993] 3 SCR 768 at pp 777-778 [Tab 8]

¹¹ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11, s 8

¹² *McInerney v MacDonald*, [1992] 2 SCR 138 at pp 148-150 [Tab 5]

¹³ At common law, the doctor-patient relationship does not attract class privilege. This Court has critiqued that lack of status: see *Halls v Mitchell*, [1928] SCR 125 at p 136 [Tab 3]

14. Before exploring the similarities between search and privilege, it is important to note one salient difference. A search analysis is content-neutral.¹⁴ That is, there is no greater or lesser protection afforded to evidence of crime. By contrast, privilege traditionally will not protect communications which are the *actus reus* of an offence, nor those made to facilitate the commission of an offence.¹⁵ The distinction makes sense because privilege necessarily deals with information in the hands of third parties, who may find it ethically or legally impossible to continue concealing the information, or who may even be victims of the crime.¹⁶ By contrast, search concepts are premised on direct state access to a thing or place, uncomplicated by third party interests. If a search analysis can be applied to information in third-party hands, the principle of content neutrality may need to be modified. Information-holders cannot be forced into the role of accomplice. At minimum, they must be at liberty to disclose information when non-disclosure may place them at risk.

15. In other senses, the purposes of search law and privilege law are similar. For both, the essential question is whether the “information is the sort that society accepts should remain out of the state’s hands because of what it reveals about the person involved, the reasons why it was collected, and the circumstances in which it was intended to be used.”¹⁷ Both require a balancing between individual protection and society’s interest in the search for truth.

16. Legal privileges are exceptions to the general rule that “[t]he public has the right to every person’s evidence.” They are recognized only where the four “Wigmore criteria” are satisfied.¹⁸ The first criterion is that the communication “must originate in a confidence.” In other words, “privilege can only be claimed where the communication is made *explicitly* in exchange for a promise of confidentiality” (emphasis in original).¹⁹ Phrased in the language of search law, there must be a subjective expectation of privacy.²⁰

¹⁴ *R v Wong*, [1990] 3 SCR 36 [Not reproduced]

¹⁵ *Descôteaux et al v Mierzwinski*, [1982] 1 SCR 860 at p 881 [Tab 2], *R v National Post*, [2010] 1 SCR 477, 2010 CarswellOnt 2776 (SCC) at para 65 [Tab 13]. There may be exceptions in the case of journalist-source privilege: see *R v National Post* at para 61 [Tab 13]

¹⁶ *R v Murray*, 2000 CarswellOnt 1953 (SCJ) at paras 121-124 [Tab 12], *Descôteaux et al v Mierzwinski*, [1982] 1 SCR 860 at p 881 [Tab 2], *R v Gomboc*, [2010] 3 SCR 211, 2010 CarswellAlta 2269 (SCC) at para 42 [Tab 10]

¹⁷ *R v Gomboc*, [2010] 3 SCR 211, 2010 CarswellAlta 2269 (SCC) at para 34 [Tab 10]; *R v National Post*, [2010] 1 SCR 477, 2010 CarswellOnt 2776 (SCC) at paras 26, 28, 42 [Tab 13]; *A (LL) v B (A)*, [1995] 4 SCR 536, 1995 CarswellOnt 955 (SCC) at paras 33-34 per L’Heureux-Dubé J, concurring [Tab 1]

¹⁸ *R v National Post*, [2010] 1 SCR 477, 2010 CarswellOnt 2776 (SCC) at paras 1, 53, 60 [Tab 13]

¹⁹ *R v National Post*, [2010] 1 SCR 477, 2010 CarswellOnt 2776 (SCC) at paras 53, 56 [Tab 13]

²⁰ *R v Patrick*, [2009] 1 SCR 579, 2009 CarswellAlta 481 (SCC) at para 27(3) [Tab 14]

17. In conventional search contexts, the requirement for proof of a subjective expectation may be relaxed; for instance, courts may presume an expectation of privacy in the home.²¹ No relaxation of the subjective element should apply to information in third-party hands. By definition, such information has been placed beyond the exclusive control of its original “owner”, who at first blush has “conducted himself in a manner that is inconsistent with the reasonable continued assertion of a privacy interest”.²² Absent a strong legal privilege or a societally recognized “informational fiduciary” relationship, it is impossible to presume a subjective expectation of privacy. For claims of confidence arising from any lesser relationship, search law should impose a firm requirement of proof of a subjective intent to share the information only in exchange for a promise of confidentiality.

18. The remaining Wigmore criteria concern the “relationship in which the communication arises”, with a focus on whether “the public interest served by protecting the [information] from disclosure outweighs the public interest in getting at the truth.”²³ The Appellant has not suggested that the ISP-customer relationship is “one which should be ‘sedulously fostered’ in the public good,”²⁴ akin to relationships between spouses or solicitor and client. Rather, he has based his claim of confidence in contract and legislation.

19. The Appellant has made some reference to “the Shaw agreement and privacy policy”.²⁵ If contracts may determine whether a police inquiry is a search, police will be faced with a practical impossibility. They would need to determine the contractual relationship between an organization and a customer whose identity is unknown in order to decide how they may learn his identity. This is untenable.²⁶

20. For his claim of confidence, the Appellant relies more heavily on the *Personal Information Protection and Electronic Documents Act* (PIPEDA).²⁷ Alberta adopts the Respondent’s interpretation of those provisions, but will not repeat them. The following

²¹ *R v Patrick*, [2009] 1 SCR 579, 2009 CarswellAlta 481 (SCC) at para 37 [Tab 14]

²² *R v Patrick*, [2009] 1 SCR 579, 2009 CarswellAlta 481 (SCC) at para 20 (emphasis deleted); see also para 27(4)(d) [Tab 14]

²³ *R v. National Post*, [2010] 1 SCR 477, 2010 CarswellOnt 2776 (SCC) at para 53 [Tab 13]

²⁴ *R v National Post*, [2010] 1 SCR 477, 2010 CarswellOnt 2776 (SCC) at para 53 [Tab 13]

²⁵ eg at Appellant’s Factum at para 50

²⁶ See also *R v Gomboc*, [2010] 3 SCR 211, 2010 CarswellAlta 2269 (SCC) at para 33 [Tab 10]

²⁷ *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, as am

discussion examines the consequences that would flow from accepting the Appellant's claim of PIPEDA-based confidence.

21. PIPEDA does not apply uniquely to ISPs. It “applies to every organization in respect of personal information that [...] collects, uses or discloses in the course of commercial activities.”²⁸ Some provinces have comparable legislation to govern privacy in commercial interactions under provincial jurisdiction. Interactions with government institutions are regulated federally by the *Privacy Act*, and by similar legislation in all provinces and territories. Every one of these statutes creates a rule of non-disclosure of personal information, with numerous exceptions, one of which is cooperation with law enforcement.²⁹

22. The information sought in this case was a customer's name and address. Most privacy legislation protects “information about an identifiable individual,” which likely includes name and address.³⁰ By contrast, in *R v Dersch*, this Court distinguished the personal content of the medical records from “neutral medical information, such as the presence of the patient in the hospital.”³¹

²⁸ *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, as am, ss 2 “organization”, 4

²⁹ Commercial sector: *Personal Information Protection Act*, SA 2003, c P-6.5, as am, s 1(i), 7, 20(f); *Personal Information Protection Act*, SBC 2003, c 63, as am, s. 1 “organization” and “personal information”, 18(1)(j); *An Act Respecting the Protection of Personal Information in the Private Sector*, RSQ, c P-39.1, as am, s 1, 2, 18(2), 18(3), 18.1. Government sector: *Privacy Act*, RSC 1985 c P-21, as am, ss 3, 8(1), 8(2)(d) and (e); *The Freedom of Information and Protection of Privacy Act*, SS 1990-91, c F-22.01, as am, ss. 24, 28, 29(1)(c) and (g); *Freedom of Information and Protection of Privacy Act*, RSA 2000, c F-25, as am, ss 1(n), 40(1)(d), (q), (r); *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31, as am, ss. 1, 2 “institution”, 42(1)(b), (f), (g); *An Act Respecting Access to Documents Held by Public Bodies and the Protection of Personal Information*, RSQ, c A-2.1, as am, ss 1, 3, 4, 53, 54, 59(1), 59(3), 59.1, 61; *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, as am, ss 3(1), 33, 33.1(1)(e), 33.1(e.1), 33(2)(i); *Freedom of Information and Protection of Privacy Act*, RSPEI 1988, c F-15.01, as am, ss 1(e), (i), (k), 37(1)(g), (g.1), (o), (p), (u); *Access to Information and Protection of Privacy Act*, SNL 2002, c A-1.1, as am, ss 2(i),(o),(p), 39(n),(o); *The Freedom of Information and Protection of Privacy Act*, CCSM c F175, as am, ss 1 “law enforcement”, “personal information”, “public body”, 42(1), 44(1)(r),(s); *Right to Information and Protection of Privacy Act*, SNB 2009, c R-10.6, as am, ss 1 “Personal information”, “pubic body”, 43, 46(d),(e); *Access to Information and Protection of Privacy Act*, SNWT 1994, c 20, as am, ss 2 “personal information”, “public body”, 47, 47.1, 48(e); *Access to Information and Protection of Privacy Act*, SNWT (Nu) 1994, c 20, as am, ss 2 “personal information”, “public body”, 47, 47.1, 48(e); *Access to Information and Protection of Privacy Act*, RSY 2002, c 1, as am, ss 3 “personal information”, “public body”, 36(l),(m); *Freedom of information and Protection of Privacy Act*, S.N.S. 1993, c. 5, as am, ss 3(1)(i),(j), 27(m),(n) [Not reproduced]

³⁰ *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, as am, s 2 “personal information”. There is some variation among the statutes. For instance, name and address are explicitly protected under the *Freedom of Information and Protection of Privacy Act*, RSA 2000, c F-25, as am, s 1(n)(i), but explicitly excluded from protection under the *Personal Information Protection Act*, SBC 2003, c 63, as am, s 1 “personal information”

³¹ *R v Dersch*, [1993] 3 SCR 768 at p778 [Tab 8]

23. Since there is little, if any relevant distinction between the provisions of PIPEDA and those of the other privacy statutes, any comment this Court may make on the interpretation of PIPEDA could have sweeping impact. Adopting the Appellant's position on PIPEDA would extend constitutionally-protected confidence to many, if not most, relationships between individuals and organizations, and to virtually every speck of information, no matter how trivial.

Consequences

24. If seeking trivial information from a commercial organization is an unreasonable search, the consequences for policing and prosecution will be dire.

25. Two examples cited by the Appellant help to illustrate the point.³² The Appellant argues that Shaw's choice to give the police a customer's name and address was equivalent to

- (a) A landlord "unlocking a suite for the police without a warrant". First, it must be noted that the analogy is flawed. In a more apt analogy, the police would ask the landlord for the name of a tenant renting an particular suite, or for the number of the suite that a known suspect is renting. Under current law, those inquiries are not searches, and warrants are not required, even though a landlord is an "organization" to which PIPEDA could apply.³³ Police could legitimately go further and ask the landlord to describe the tenant's belongings, history, associates, and habits. A warrant requirement would arise only if the police were to enter the suite and make their own direct observations.
- (b) A telephone service provider "allowing police to listen in on telephone calls without authorization." The better analogy would be to a police request for the name attached to a given phone number, or the phone number attached to a given address. Moving farther afield, police can ask participants or eavesdroppers to describe the contents of past telephone conversations. None of these requests are searches. A requirement for judicial authorization would arise only if the police were to tap the phone line or record the call and make their own direct observations.

³² See Appellant's Factum at para 52

³³ *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, as am, s 2 "organization"

If a warrant is required in the case at bar, warrants would likely also be required in the above scenarios and countless others. The implications for police and court resources are obvious.

26. An example related to the case at bar will illustrate a more subtle implication. In this hypothetical, police observed that child pornography was being distributed from a particular internet protocol (IP) address. They obtained the related customer name and physical address from the only possible source – the ISP. They used that information to obtain a search warrant for that physical address. Later, a court ruled that s 8 was violated because the ISP released the name and address in violation of a duty of confidence. Information obtained in violation of the *Charter* was excised from the information to obtain the search warrant (there is no s 24(2)-like balancing at this stage³⁴). With no information as to location, there were no grounds to support a search at that location. The warrant fell and the resulting search violated s 8.

27. If Detective Sergeant Parisian’s question to Shaw is found to be search, it opens the possibility that any similar question could also be a search. Police would need to obtain search warrants before making even the most superficial inquiries of commercial or governmental witnesses (airlines, retailers, utilities, motels, land titles, correctional institutions...) or risk the loss of crucial evidence to an adverse *Charter* ruling at trial.

The Charter is not the only remedy

28. Privacy protections can be recognized in their own contexts, without rising to the level of confidences for purposes of s 8 of the *Charter*. For instance, if a journalist were to break a promise to a source, there may be “some sort of private law claim for breach of contract or breach of confidence or other private common law cause of action”.³⁵ As another example, this Court rebuffed the suggestion that a bylaw created a privacy expectation in residential garbage by observing that a s 8 appeal was “not a bylaw enforcement proceeding.”³⁶

29. PIPEDA-level privacy is both commonplace and shallow. “Confidence”, particularly the kind of confidence that s 8 will protect, should be neither. PIPEDA privacy problems should be addressed by PIPEDA’s remedies.³⁷ *Charter* remedies are disproportionate.³⁸

³⁴ *R v Grant*, [1993] 3 SCR 223 at pp 251-252 [Tab 11]

³⁵ *R v National Post*, [2010] 1 SCR 477, 2010 CarswellOnt 2776 (SCC) at para 63, emphasis deleted [Tab 13]

³⁶ *R v Patrick*, [2009] 1 SCR 579, 2009 CarswellAlta 481 (SCC) at paras 67-68 [Tab 14]

³⁷ *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, as am, ss 13, 16

³⁸ *R v Chehil*, 2009 CarswellNS 602 (CA) at paras 23-25, 44-46 [Tab 6]

Much lost, nothing gained

30. Fundamentally, search law asks whether “the public's interest in being left alone by government must give way to the government's interest in intruding on the individual's privacy in order to advance its goals, notably those of law enforcement.”³⁹ Privilege law asks the same question: whether “the injury that is likely to result from disclosure [outweighs] the public interest in correctly disposing of the criminal investigation”⁴⁰

31. This Court has identified two rationales for privilege, both of which can be extended to confidence-based search claims. The “utilitarian theory ... focuses on the societal importance of certain relationships” and recognizes privilege “only if the benefit derived from protecting the relationship outweighs the detrimental effects ... on the search for truth.”⁴¹ Less commonly employed is the “privacy justification”, which would protect communications within “human relationships [that] are fundamental to human dignity and should be free from state interference.”⁴² Neither rationale applies to commercial relationships.

32. It may be that individuals would like even their most widely-shared information to remain beyond the reach of the police, but such a desire is not reasonable – and desire is not to be confused with expectation. Society would gain nothing of value if constitutional protection were granted to mundane commercial information. To the contrary: to throw the cloak of confidence around every manner of commercial interaction would “blow a giant hole in law enforcement”.⁴³

33. Significant practical and policy consequences would flow from characterising police inquiries as searches. Strong promises of confidence may, under certain circumstances, justify a modified search analysis, but this is not such a case. Alberta asks this Court to find that Detective Sergeant Parisien’s question was not a search, and that similar questions posed to similar witnesses should not be analyzed as searches.

³⁹ *Hunter c Southam Inc.*, [1984] 2 SCR 145 at pp 159-160 [Tab 4]

⁴⁰ *R v National Post*, [2010] 1 SCR 477, 2010 CarswellOnt 2776 (SCC) at para 74 [Tab 13]

⁴¹ *A(LL) v B(A)*, [1995] 4 SCR 536, 1995 CarswellOnt 955 (SCC) at paras 33-34 per L'Heureux-Dubé J, concurring [Tab 1]. Also *R v National Post*, [2010] 1 SCR 477, 2010 CarswellOnt 2776 (SCC) at paras 26, 28, 42 [Tab 13]

⁴² *A(LL) v B(A)*, [1995] 4 SCR 536, 1995 CarswellOnt 955 (SCC) at para 35 per L'Heureux-Dubé J, concurring [Tab 1], qting Anna Y. Joo, “Broadening the Scope of Counselor-Patient Privilege to Protect the Privacy of the Sexual Assault Survivor” (1995), 32 Harv. J. on Legis. 255 [Not Reproduced]

⁴³ *R v National Post*, [2010] 1 SCR 477, 2010 CarswellOnt 2776 (SCC) at para 40 [Tab 13]

PART IV – SUBMISSIONS ON COSTS

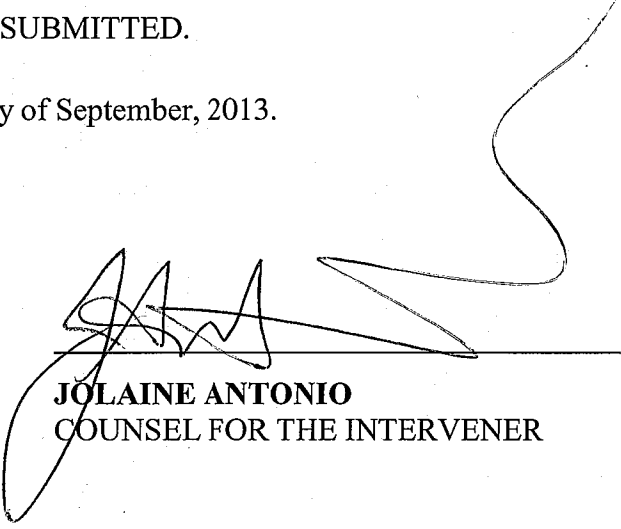
34. Alberta makes no submissions regarding costs.

PART V – ORDER SOUGHT

35. Alberta takes no position on the outcome of the case at bar, and seeks permission to present oral argument, for such duration as the Court may direct, at the hearing of the appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at Calgary, Alberta, this 20th day of September, 2013.



JOLAINE ANTONIO
COUNSEL FOR THE INTERVENER

JAA/smb

PART VI – TABLE OF AUTHORITIES

TAB		Cited at Paragraph No.
1	<i>A (LL) v B (A)</i> , [1995] 4 SCR 536; 1995 CarswellOnt 955 (SCC)	15, 31
2	<i>Descôteaux et al v Mierzwinski</i> , [1982] 1 SCR 860 (SCC)	14
3	<i>Halls v Mitchell</i> , [1928] SCR 125	12
4	<i>Hunter c Southam Inc</i> , [1984] 2 SCR 145	9, 30
5	<i>McInerney v MacDonald</i> , [1992] 2 SCR 138	12
6	<i>R v Chehil</i> , 2009 CarswellINS 602 (CA)	29
7	<i>R v Cole</i> , [2012] 3 SCR 34; 2012 CarswellOnt 12684 (SCC)	10
8	<i>R v Dersch</i> , [1993] 3 SCR 768	12, 22
9	<i>R v Gendreau</i> , 2011 CarswellAlta 1637 (CA)	8
10	<i>R v Gomboc</i> , [2010] 3 SCR 211; 2010 CarswellAlta 2269 (SCC)	14, 15, 19
11	<i>R v Grant</i> , [1993] 3 SCR 223	26
12	<i>R v Murray</i> , 2000 CarswellOnt 1953 (SCJ)	14
13	<i>R v National Post</i> , [2010] 1 SCR 477; 2010 CarswellOnt 2776 (SCC)	14, 15, 16, 18, 28, 30, 31, 32
14	<i>R v Patrick</i> , [2009] 1 SCR 579; 2009 CarswellAlta 481 (SCC)	8, 9, 10, 16, 17, 28
15	<i>R v Tessling</i> , [2004] 3 SCR 432; 2004 CarswellOnt 4351 (SCC)	9, 10

PART VII – LEGISLATION AT ISSUE

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11

8. Everyone has the right to be secure against unreasonable search or seizure.

8. Chacun a droit à la protection contre les fouilles, les perquisitions ou les saisies abusives.

Criminal Code, RSC 1985, c C-46, as am

487(1) Information for search warrant

A justice who is satisfied by information on oath in Form 1 that there are reasonable grounds to believe that there is in a building, receptacle or place

- (a) anything on or in respect of which any offence against this Act or any other Act of Parliament has been or is suspected to have been committed,
- (b) anything that there are reasonable grounds to believe will afford evidence with respect to the commission of an offence, or will reveal the whereabouts of a person who is believed to have committed an offence, against this Act or any other Act of Parliament,
- (c) anything that there are reasonable grounds to believe is intended to be used for the purpose of committing any offence against the person for which a person may be arrested without warrant, or

(c.1) any offence-related property,

may at any time issue a warrant authorizing a peace officer or a public officer who has been appointed or designated to administer or enforce a federal or provincial law and whose duties include the enforcement of this Act or any other Act of Parliament and who is named in the warrant

- (d) to search the building, receptacle or place for any such thing and to seize it, and
- (e) subject to any other Act of Parliament, to, as soon as practicable, bring the thing seized before, or make a report in respect thereof to, the justice or some other justice for the same territorial division in accordance with section 489.1.

487(1) Dénonciation pour mandat de perquisition

Un juge de paix qui est convaincu, à la suite d'une dénonciation faite sous serment suivant la formule 1, qu'il existe un motif raisonnable de croire que, dans un bâtiment, contenant ou lieu, se trouve, selon le cas:

- a) une chose à l'égard de laquelle une infraction à la présente loi, ou à toute autre loi fédérale, a été commise ou est présumée avoir été commise;
- b) une chose dont on a des motifs raisonnables de croire qu'elle fournira une preuve touchant la commission d'une infraction ou révélera l'endroit où se trouve la personne qui est présumée avoir commis une infraction à la présente loi, ou à toute autre loi fédérale;
- c) une chose dont on a des motifs raisonnables de croire qu'elle est destinée à servir aux fins de la perpétration d'une infraction contre la personne, pour laquelle un individu peut être

arrêté sans mandat;

c.1) un bien infractionnel,

peut à tout moment décerner un mandat autorisant un agent de la paix ou, dans le cas d'un fonctionnaire public nommé ou désigné pour l'application ou l'exécution d'une loi fédérale ou provinciale et chargé notamment de faire observer la présente loi ou toute autre loi fédérale, celui qui y est nommé:

d) d'une part, à faire une perquisition dans ce bâtiment, contenant ou lieu, pour rechercher cette chose et la saisir;

e) d'autre part, sous réserve de toute autre loi fédérale, dans les plus brefs délais possible, à transporter la chose devant le juge de paix ou un autre juge de paix de la même circonscription territoriale ou en faire rapport, en conformité avec l'article 489.1.

Personal Information Protection and Electronic Documents Act, **SC 2000, C 5, as am**

2(1) The definitions in this subsection apply in this Part.

"**commercial activity**" means any particular transaction, act or conduct or any regular course of conduct that is of a commercial character, including the selling, bartering or leasing of donor, membership or other fundraising lists.

"**organization**" includes an association, a partnership, a person and a trade union.

"**personal information**" means information about an identifiable individual, but does not include the name, title or business address or telephone number of an employee of an organization.

4(1) This Part applies to every organization in respect of personal information that

- (a) the organization collects, uses or discloses in the course of commercial activities; or
- (b) is about an employee of the organization and that the organization collects, uses or discloses in connection with the operation of a federal work, undertaking or business.

4(2) Limit

This Part does not apply to

- (a) any government institution to which the *Privacy Act* applies;
- (b) any individual in respect of personal information that the individual collects, uses or discloses for personal or domestic purposes and does not collect, use or disclose for any other purpose; or
- (c) any organization in respect of personal information that the organization collects, uses or discloses for journalistic, artistic or literary purposes and does not collect, use or disclose for any other purpose.

4(3) Other Acts

Every provision of this Part applies despite any provision, enacted after this subsection comes into force, of any other Act of Parliament, unless the other Act expressly declares that that provision operates despite the provision of this Part.

13(1) Contents

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.

13(2) [Repealed 2010, c. 23, s. 84.]

13(3) Report to parties

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

16. Remedies

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 sections 5 to 10;
- (b) order an organization to publish a notice of any action taken or proposed to be taken to correct its practices, whether or not ordered to correct them under paragraph (a); and
- (c) award damages to the complainant, including damages for any humiliation that the complainant has suffered.

2(1) Les définitions qui suivent s'appliquent à la présente partie.

«**activité commerciale**» Toute activité régulière ainsi que tout acte isolé qui revêtent un caractère commercial de par leur nature, y compris la vente, le troc ou la location de listes de donneurs, d'adhésion ou de collecte de fonds. (*«commercial activity»*)

«**organisation**» S'entend notamment des associations, sociétés de personnes, personnes et organisations syndicales. (*«organization»*)

«**renseignement personnel**» Tout renseignement concernant un individu identifiable, à l'exclusion du nom et du titre d'un employé d'une organisation et des adresse et numéro de téléphone de son lieu de travail. (*«personal information»*)

4(1) La présente partie s'applique à toute organisation à l'égard des renseignements personnels :

- a) soit qu'elle recueille, utilise ou communique dans le cadre d'activités commerciales;
- b) soit qui concernent un de ses employés et qu'elle recueille, utilise ou communique dans le cadre d'une entreprise fédérale.

4(2) Limite

La présente partie ne s'applique pas:

- a) aux institutions fédérales auxquelles s'applique la *Loi sur la protection des renseignements personnels*;

- b) à un individu à l'égard des renseignements personnels qu'il recueille, utilise ou communique à des fins personnelles ou domestiques et à aucune autre fin;
- c) à une organisation à l'égard des renseignements personnels qu'elle recueille, utilise ou communique à des fins journalistiques, artistiques ou littéraires et à aucune autre fin.

4(3) Autre loi

Toute disposition de la présente partie s'applique malgré toute disposition — édictée après l'entrée en vigueur du présent paragraphe — d'une autre loi fédérale, sauf dérogation expresse de la disposition de l'autre loi.

13(1) Contenu

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

- a) il présente ses conclusions et recommandations;
- b) il fait état de tout règlement intervenu entre les parties;
- c) il demande, s'il y a lieu, à l'organisation de lui donner avis, dans un délai déterminé, soit des mesures prises ou envisagées pour la mise en oeuvre de ses recommandations, soit des motifs invoqués pour ne pas y donner suite;
- d) mentionne, s'il y a lieu, l'existence du recours prévu à l'article 14.

13(2) [Abrogé, 2010, ch. 23, art. 84.]

13(3) Transmission aux parties

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

16. Réparations

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

- a) ordonner à l'organisation de revoir ses pratiques de façon à se conformer aux articles 5 à 10;
- b) lui ordonner de publier un avis énonçant les mesures prises ou envisagées pour corriger ses pratiques, que ces dernières aient ou non fait l'objet d'une ordonnance visée à l'alinéa a);
- c) accorder au plaignant des dommages-intérêts, notamment en réparation de l'humiliation subie.