Federal Court Cour fédérale

Date: 20160318

Dockets: T-1423-14
T-1424-14

Citation: 2016 FC 332

Ottawa, Ontario, March 18, 2016

PRESENT: The Honourable Mr. Justice Martineau

Docket: T-1423-14

BETWEEN:

FRANK BERTUCCI

Applicant

and

ROYAL BANK OF CANADA

Respondent

Docket: T-1424-14

AND BETWEEN:

GIUSEPPE BERTUCCI

Applicant

and

ROYAL BANK OF CANADA

Respondent

JUDGMENT AND REASONS

[1] These are two applications pursuant to section 14 of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 [Act], with respect to Reports of Findings prepared on May 1, 2014 by the Office of the Privacy Commissioner of Canada [OPCC] which held that two complaints filed against the Royal Bank of Canada [RBC] were not well-founded. RBC is a Canadian chartered bank that offers financial services to private individuals.

[2] In these reasons for judgment, reference to the parties' records will be by page number in the applicant's record [**AR 1423** and **1424]** or the respondent's record [**RR 1423** and **1424**], while reference to any alleged confidential document will be by tab number or page number in the "Counsel's eyes only information" [CEO information] submitted by the respondent under seal to the Court [**CEO 1423** and **1424**].

[3] The two applicants, Mr. Frank Bertucci (file T-1423-14) and Mr. Giuseppe Bertucci (file T-1424-14) [collectively, the applicants], seek disclosure of all personal information RBC holds on them, including information related to the decision to close their bank accounts. Mr. Frank Bertucci further seeks damages of $20,000 and punitive damages of $5,000, whereas Mr. Giuseppe Bertucci seeks damages of $10,000 and punitive damages of $5,000.

[4] The relevant facts are not at issue.

[5] Mr. Frank (Francescantonio) Bertucci is a semi-retired businessman from Montreal. He is known for his work at the human resources firm Thomson Tremblay. He held a bank account at RBC for over 35 years. Mr. Giuseppe Bertucci is the son of Frank Bertucci. He is currently President of Thomson Tremblay. He was a client of RBC for over 20 years. In September 2011, both applicants were also clients of other Canadian banking institutions and holders of credit cards from other financial institutions. Two real estate holding companies (3458920 Canada Inc. and 3008576 Canada Inc.) related to the applicants were also clients of RBC.

[6] On September 28, 2011, the applicants were notified that RBC had decided to terminate its relationship with them. They were given a written notice on the same day (RR 1423 at Tab 2), though this notice did not provide an explanation for the closing of their bank accounts. Nevertheless, RBC states that it gave oral reasons for the termination at that time, indicating that it was not comfortable continuing its relationship with the applicants. RBC also warned it would be closing the bank accounts of both companies related to the applicants. The bank accounts were closed on or about November 15, 2011. The applicants took their business elsewhere.

[7] On August 2, 2012, the applicants requested that RBC disclose any personal information it held about them (AR 1423 at Tab 5 and AR 1424 at Tab 5). On October 2, 2012, RBC replied that it had provided oral reasons for the closing of the bank accounts on September 28, 2011, that it had the right to unilaterally close the accounts without notice, that it had not received any information from a third party, and that all the personal information sought by the applicants was commercially confidential (AR 1423 at Tab 6 and AR 1424 at Tab 6).

[8] On October 2, 2012, RBC confirmed by email that it was relying on the confidential commercial information exemption in paragraph 9(3)(b) of the Act. That paragraph provides as follows:

When access prohibited	Cas où la communication est interdite
9. […]	9. […]
When access may be refused	*Cas où la communication peut être refusée*
(3) Despite the note that accompanies clause 4.9 of Schedule 1, an organization is not required to give access to personal information only if	(3) Malgré la note afférente à l'article 4.9 de l'annexe 1, l'organisation n'est pas tenue de communiquer à l'intéressé des renseignements personnels dans les cas suivants seulement :
[…]	[…]
(b) to do so would reveal confidential commercial information;	b) la communication révélerait des renseignements commerciaux confidentiels;
[…]	[…]
However, in the circumstances described in paragraph (b) or (c), if giving access to the information would reveal confidential commercial information or could reasonably be expected to threaten the life or security of another individual, as the case may be, and that information is severable from the record containing any other information for which access is requested, the organization shall give the individual access after severing.	Toutefois, dans les cas visés aux alinéas b) ou c), si les renseignements commerciaux confidentiels ou les renseignements dont la communication risquerait vraisemblablement de nuire à la vie ou la sécurité d'un autre individu peuvent être retranchés du document en cause, l'organisation est tenue de faire la communication en retranchant ces renseignements.

[9] On February 21, 2013, the applicants formally complained to the OPCC, challenging RBC's decision not to disclose any personal information to them. On May 1, 2014, the OPCC issued its Reports of Findings [OPCC Reports] on the applicants' complaints, concluding that the matter was not well-founded and that RBC had justifiably withheld the personal information (AR 1423 and AR 1424 at Tab 10). The OPCC noted that in his correspondence, the representative of the complainant raised a number of challenges, espousing the position that, while the internal memoranda regarding RBC's decision to terminate its client relationship may be "commercially sensitive", a distinction must be made between internal discussions and the records that the bank relied upon in its decision to terminate (i.e. the "raw data").

[10] The OPCC reviewed Office of the Privacy Commissioner findings for general guidance as to the interpretation of the exception provided under paragraph 9(3)(b) of the Act, noting that a bank's internal credit scoring model had been found to be confidential commercial information (the Act Case Summaries #2002-39 and #2002-63). The OPCC also noted that in the Act Report of Findings #2011-010, information generated by a bank's internal investigation of alleged credit card fraud could be considered confidential commercial information and could therefore be exempt from access under paragraph 9(3)(b). The OPCC stated that in that case, the commercial interest at stake was "preserving contractual obligations of confidentiality", and noted that if such information were released, "the commercial interests of the respondent could suffer irreparable harm", putting merchants with whom the respondent had contractual obligations of confidentiality at risk. Finally, the OPCC reviewed the information that RBC withheld from the complainant and concluded that RBC was entitled to withhold such information, as disclosure

would reveal information that was "treated as confidential by RBC, including information about the bank's internal methods for assessing business-related risks."

[11] The applicants filed their applications to the Court on June 13, 2014. Pursuant to subsection 17(1) of the Act, 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. An application under section 14 of the Act is a *de novo* hearing and not a judicial review (*Englander v Telus Communications Inc*, 2004 FCA 387 at paras 47-48 [*Englander*]). The OPCC Reports are not to be treated as the impugned decisions but rather as evidence that may be challenged or contradicted and to which no deference is owed (*Englander* at para 48). Accordingly, what is at issue is RBC's conduct and compliance with the Act (*Vanderbeke v Royal Bank of Canada*, 2006 FC 651 at para 12).

[12] Besides the OPCC Reports, all relevant public evidence is included in the parties' records. Four individuals have been cross-examined in these proceedings:

a) Mr. Frank Bertucci;

b) Mr. Giuseppe Bertucci;

c) Mr. James Dickson, in charge of the Anti-Money Laundering Financial Intelligence Unit [FIU] at RBC; and

d) Ms. Balraj Lochab, Senior Manager, Regulatory and Complaint Liaison, Canadian Banking Compliance at RBC.

[13] The disputed personal information in this case is subject to the Confidentiality Orders in these matters, dated November 10, 2015. The CEO information, filed under seal pursuant to the

Confidentiality Orders, comprises the same documents in both Court Files. The RBC does not challenge the fact that the CEO information does indeed contain "personal information" within the meaning of the definition in subsection 2(1) of the Act – that is, information about the two applicants.

[14] While the CEO information has been disclosed to the applicants' counsel, but not to the applicants, nothing in the Confidentiality Orders shall "[l]imit any of the parties from asserting that any information designated CEO information pursuant to this confidentiality order is in fact not confidential" (paragraph 14(b) of the Confidentiality Orders). Moreover, "[t]he terms and conditions of use of designated CEO information and the maintenance of the confidentiality thereof during any hearing of this proceeding shall be matters in the discretion of the judge seized of this matter" (paragraph 16 of the Confidentiality Orders).

[15] On January 12, 2016, the Court heard in an *in camera* hearing, without the presence of the applicants, the oral submissions made by the parties' counsel with respect to the applicants' allegations and the respondent's conduct in this matter, particularly their submissions concerning the withheld CEO information. The Court took the matter under advisement, including any objections made by the applicants' counsel that some documents included in the CEO information booklets are not in fact confidential.

[16] The present applications raise the same issue: Can RBC refuse to provide access to the undisclosed personal information it has collected about the applicants on the grounds that its disclosure in this case would reveal confidential commercial information?

[17] Relying on paragraph 9(3)(b) of the Act, which states that an organization is not required to give access to personal information if it would reveal confidential commercial information, the respondent has argued that the present applications constitute an attempt at circumventing the legal rule that a bank need not justify its decision to end a banking relationship. However, the applicants take issue with the qualification under the Act of the undisclosed personal information that RBC says falls under the confidential commercial exemption in paragraph 9(3)(b).

Submissions of the applicants

[18] Personal information is defined under subsection 2(1) of the Act as "information about an identifiable individual". Principle 9 found in Schedule I to the Act holds that exceptions to the access requirement should be limited and specific. The applicants argue that RBC did not comply with the Act. Pursuant to Principle 4.9, upon request, an individual should be informed of the existence, use, and disclosure of his or her personal information and should be given access to that information. An individual should also be able to challenge the accuracy and completeness of the information and have it amended as appropriate. The applicants submit that the purpose of the Act is to allow individuals to understand the nature of the information that is held concerning them, and to allow them to have the opportunity to correct this information should there be a need to do so.

[19] In the case at bar, the applicants argue that RBC could have disclosed a redacted version of its risk assessment analysis. First, the cross-examination of Mr. Dickson revealed that clients are in fact informed when they are considered "too risky", although this information was never communicated to the applicants in the present case. Second, the redaction of certain information

would sufficiently protect any confidential commercial information. Instead, the applicants submit that RBC applied a blanket exemption under paragraph 9(3)(b) of the Act in order to withhold the entirety of information in the applicants' files. Third, the applicants submit that RBC has provided insufficient evidence that it properly reviewed the personal information before refusing disclosure. The only evidence was provided by Ms. Lochab, who did not actually work on the original access to information request.

[20] The applicants argue that there is something manifestly wrong with the way the respondent has approached their file. The Act grants individuals a quasi-constitutional right to access their personal information and to verify the accuracy of such information, subject to a limited set of exceptions. Disclosure of personal information is the rule, and withholding such information is the exception. The applicants wish to access the personal information related to RBC's decision to terminate their banking relationship, not so that they may try to re-establish this relationship, but rather so that they may have the opportunity to correct any information that may be inaccurate and that may continue to have a negative impact on their lives in the future. To this end, counsel for the applicants argue that with the exception of the first document filed under seal [CEO 1423 and 1424 at Tab 1], the majority of the remainder of the CEO information [CEO 1423 and 1424 at Tabs 2 to 6] should have been disclosed. Indeed, there is no convincing evidence presented by the respondent in these proceedings that these latter documents were even treated as confidential by RBC personnel.

[21] The applicants also submit that the respondent's argument that the CEO information is confidential commercial information because it relates to RBC's risk tolerance level and its

decision to terminate the banking relationship is antithetical to the purpose of the Act, which is legislation of a quasi-constitutional nature. They argue that this reading of the legislation would create a two-tiered system in which the kind of personal information disclosed by an institution would differ depending on whether it was requested before or after a decision to terminate. The applicants submit that this interpretation is unacceptable. The applicants also underline that the exceptions to the disclosure of personal information under the Act are not intended to provide a cover for those wishing to avoid controversy and embarrassment, which the applicants suggest is the motivation behind RBC's refusal to disclose information in the present case.

[22] The applicants submit that RBC should be ordered to disclose all of the personal information it holds on them. This Court should be flexible, pragmatic and use common sense in balancing RBC's interests against the applicants' (*Englander* at para 46). In the present case, the applicants were given no information about RBC's reasons for terminating their relationship, not even redacted documents or a summary of the information RBC relied upon. The applicants thus seek the disclosure of information that directly affects them, that has apparently had a prejudicial effect on the RBC's perception of them, and that may very well be erroneous. In the alternative, they seek the requested information that is severable from the "confidential commercial information" or a general summary thereof. However, if giving access to the information would reveal confidential commercial information that is severable from other information for which access is requested, subsection 9(3) of the Act provides that the organization shall give the individual access after severing.

[23] Finally, the applicants seek damages and punitive damages pursuant to subsection 16(c) of the Act. Damages should be awarded in light of the general objects and values of the Act and to deter similar action in the future (*Nammo v TransUnion of Canada Inc*, 2010 FC 1284 at paras 71 and 76 [*Nammo*]). The applicants argue that they should receive damages because they were humiliated and suffered significant prejudice from having to make alternative banking arrangements. They continue to have difficulties opening bank accounts and obtaining credit. As for punitive damages, they are reasonable according to the principles set out by Justice Phelan in *Chitrakar v Bell TV*, 2013 FC 1103 at paras 24-28.

Submissions of the respondent

[24] The respondent submits that banks are not required to provide specific reasons for terminating a customer's account, only to provide reasonable notice (see e.g. *Pourshafiey c Toronto Dominion Bank*, 2012 QCCS 5635 at para 14). In the present case, the applicants were provided with seven weeks to transfer their funds. The respondent argues that the present applications constitute an attempt at circumventing the legal rule that a bank need not justify its decision to end a banking relationship.

[25] According to the respondent, the applicants confirmed in October 2012 that they only sought the information specifically identified in their August 2012 letters, that is: (1) all information that the Bank relied upon in deciding to terminate the banking relationships; (2) all correspondence mentioning the applicants related to the decision to terminate the banking relationships; and (3) all information about the applicants that RBC obtained from a third party between January 1, 2011 and August 2, 2012, regardless of whether or not it was relied upon to

terminate the banking relationships. Thus RBC did not apply any "blanket exemption". Rather, all the "raw information" sought by the applicants is already in their possession as it is either information they provided to RBC or information that had been previously provided to them (such as bank statements).

[26] The respondent argues that all the personal information remaining in its possession is exempt because it would reveal confidential commercial information. For the exemption to apply, RBC must demonstrate that the information has commercial value and is expressly or implicitly confidential. The respondent points out that in earlier cases, the OPCC held that a bank's credit scoring models and internal investigation into alleged credit card fraud were confidential commercial information protected by paragraph 9(3)(b) of the Act. The respondent states that the term "confidential commercial information" is not defined in the Act, but notes that the OPCC held, in Case Summary #39, that it is useful to consider such information as being analogous to "trade secrets."

[27] To this end, the OPCC notes that it is helpful in determining whether information is "confidential" to consider the factors commonly used by the courts in determining what constitutes a trade secret, namely:

- the extent to which the information is generally known;
- whether it is known to others in the same business or trade;
- whether it is known within the organization;
- whether someone outside the organization could acquire the information independently;

- the extent to which the organization takes special measures to ensure the secrecy of the information; and
- whether the information is in some way unique or original.

[28] The same Case Summary also indicates a range of factors to be considered in determining whether information is "commercial" or "business" information, including:

- the economic value of the information;
- the value of the information to the organization;
- the value of the information to competitors of the organization;
- whether the information provides the organization with an advantage over competitors; and
- the expenditure of resources, time and independent effort in developing and protecting the information.

[29] In the present case, the respondent argues that disclosing which information RBC reviews to determine the business-related risks of an existing client would reveal its internal risk assessment criteria, methods and tolerance level. As Mr. Dickson's affidavit demonstrates, the RBC clearly regards the requested information as confidential commercial information. The respondent also asserts that the very information that RBC chooses to review to determine the business-related risk of an existing client forms part of the multi-factor approach used by RBC to assess such risk. RBC's desire to keep this information confidential is also consistent with industry standards and with its internal practices, and the information holds important economic value.

[30] Indeed, the essence of the respondent's argument is that <u>any information</u> – to the extent that it has been selected as relevant by RBC for its risk assessment processes – reveals something about these processes, and must therefore be considered confidential commercial information. In this way, it is the decision by RBC to consider a document as relevant that must be taken into account, rather than the content of the document itself. As a result, even a "public" document such as a newspaper article constitutes confidential commercial information if it has been retained as part of the institution's intelligence gathering activities. The CEO information, if disclosed, would give competitors insight into the weight RBC gives to various risk factors in a banking relationship, revealing RBC's thresholds and tipping points.

[31] Based on the nature of the CEO information, it can also be surmised that the respondent does not wish to be held publicly accountable for its decisions relating to the accounts of clients who are the subject of serious allegations or damaging hearsay-type information, as such information could harm RBC's reputation. This concern was not stated explicitly by counsel for the respondent during the hearing, but nonetheless seems to subtend the respondent's arguments. As a result, the Court must consider how to balance the reputational and commercial concerns of the respondent, as a banking institution, against the reputational concerns of the applicants as individuals.

[32] The respondent maintains that it properly reviewed the applicants' files. The jurisprudence requires a "reasonable search" (*Johnson v Bell Canada*, 2008 FC 1086 at paras 42-43). Ms. Lochab, who was given full access to RBC's documents, gave evidence confirming that this standard was met.

[33] Finally, the respondent submits that there is no basis for awarding damages. Damages should only be awarded when there has been a serious or outrageous breach of the Act (*Blum v Mortgage Architects Inc*, 2015 FC 323 at para 19 [*Blum*]), yet RBC did not breach the Act. Moreover, there is no evidence that the applicants suffered any prejudice from RBC's termination of their banking relationship, or that the problems they might have had with other banks were caused by RBC. Moreover, punitive damages are intended to sanction malicious and outrageous behaviour (*Biron v RBC Royal Bank*, 2012 FC 1095 at para 39 [*Biron*]), which has not been proven in this instance. The cases cited by the applicants can be distinguished because they awarded damages for wrongful disclosure of information to third parties or involved exceptional facts.

Determination

[34] The Act is quasi-Constitutional legislation (*Nammo* at para 74), and in interpreting this legislation, the Court must strike a balance between protecting the right of privacy and facilitating the collection, use and disclosure of personal information (*Englander* at para 46). The Act also serves an important role in ensuring a degree of accuracy with respect to this personal information. As the Supreme Court stated in *Canada v Blood Tribe Department of Health*, 2008 SCC 44 at para 13:

> Individuals are often unaware of the nature and extent of information about themselves being collected and stored by numerous private organizations […]. Some of this information may be quite inaccurate. […] Accordingly, Parliament recognized that a corollary to the protection of privacy is the right of individuals to access information about themselves by others in order to verify its accuracy.

[35] A balanced approach must be adopted in light of the quasi-constitutional nature of the Act, and courts cannot simply defer to the general qualification given by an organization to the information withheld under paragraph 9(3)(b) of the Act. In the present case, I find that the confidential commercial information exception does not apply to the personal information contained in the CEO information, save and except the information at Tab 1 and part of Tab 4. I find the reasons advanced by the respondent for not disclosing such personal information unconvincing and not substantiated by affidavit evidence. There must be articulate reasons for denying access to any particular document. Based on the affidavit evidence submitted by the respondent, the Court is not satisfied that the withheld information is “confidential commercial information” in light of the relevant factors identified by the OPCC and the Court, nor that it was impossible to provide a redacted version of a document containing any confidential commercial information.

[36] I dismiss the arguments made by the respondent and I basically endorse the written arguments made by the applicants and the oral arguments made by their counsel during the *in camera* hearing, which have already been summarized above. Therefore, I will not repeat these arguments, except to make the following additional observations concerning the qualification of the disputed documents included in the CEO information.

[37] For the purpose of providing articulate reasons that enable the applicants to follow the Court’s reasoning, I am satisfied that an edited version of the list of documents included in the CEO information is not confidential information within the meaning of the Confidentiality Orders. In essence, the disagreement in this matter centres on the definition and extent of what

may be considered "confidential commercial information" for the purposes of the exception under paragraph 9(3)(b) of the Act.

[38] Without revealing the particular content of the CEO information that is subject to the Confidentiality Orders, the disputed documents may nonetheless be generally identified as the following:

a) An "Enhanced Due Diligence Report" prepared by and for the RBC FIU [CEO 1423 and 1424 at Tab 1];

b) Information relating to "Sales Platform" and "AMLS Incidents" [CEO 1423 and 1424 at Tab 2];

c) Excel spreadsheets relating to banking transactions [CEO 1423 and 1424 at Tab 3];

d) An internal email about account activity and attachments [CEO 1423 and 1424 at Tab 4];

e) A newspaper article [CEO 1423 and 1424 at Tab 5];

f) Syfact reports from RBC personnel [CEO 1423 and 1424 at Tab 6].

[39] In the present case, it appears that much of the applicants' personal information that is being held by the respondent is in fact simply "raw data" – information that, if disclosed, would not reveal confidential practices, techniques or analysis of a commercial nature, falling within the exemption at paragraph 9(3)(b). This information is not of the nature of a credit-scoring model (as per the Act Case Summaries #2002-39 and #2002-63), nor can it be reasonably described as being akin to a "trade secret." Rather, for the most part, this information seems not to have been analyzed or treated as confidential at the time of its creation. Moreover, the standard for justifying the withholding of information under paragraph 9(3)(b) of the Act is very

high (see Act Case Summary #2002-39). Therefore, the respondent's argument that the disclosure of the information it has collected might reveal RBC's risk thresholds or tolerance level is insufficient to justify the withholding of information that is not otherwise confidential or which does not demonstrate – apart from the very fact of its collection or retention – any further analysis by RBC.

[40] With respect to Tab 1 of the CEO information, counsel for the respondent conceded at the hearing that the majority of the Enhanced Due Diligence Report contained at this Tab, and prepared by the RBC FIU, could indeed be classified as confidential commercial information. However, they submitted that portions of this document – namely, the title, date, name of the Investigator who prepared the report, and one line of the report's conclusion – could be severed and disclosed. Nevertheless, I find that such severance would be inappropriate under the circumstances, as the document as a whole was clearly considered to be confidential at the time of its production, and is marked as such.

[41] Tab 2 of the CEO information, which contains information relating to "Sales Platform" and "AMLS Incidents" [CEO 1423 and 1424 at Tab 2], appears to be related to the records of the applicants, and there is no indication that it is confidential commercial information or that it has been analysed in any way.

[42] At Tab 3 of the CEO information, the Excel spreadsheets containing supposedly analyzed (according to the respondent) banking transactions appear to be the records the bank relied upon

in its decision to terminate (i.e. the “raw data”), and I see no reason why any such “raw data” can be considered confidential commercial information.

[43] With respect to Tab 4 of the CEO information, the internal email about account activity should be severed and some of the attached account information should be disclosed. The email itself [CEO 1423 and 1424 pages 46-47] appears to demonstrate some internal analysis by RBC of the applicants' files and their associated risk. As a result, this information would fall within the confidential commercial information exception. However, the attached “DDA Information” [CEO 1423 and 1424 pages 48-62], the Excel spreadsheets [CEO 1423 and 1424 pages 63-68], and the account information contained at CEO 1423 and 1424 pages 69-81, all appear to be “raw data”, rather than “confidential commercial information”, and should be disclosed. The attached Enhanced Due Diligence Report [CEO 1423 and 1424 pages 81-91] is a copy of the document found at Tab 1, and should not be disclosed for the reasons already given. On the other hand, the newspaper article [CEO 1423 and 1424 page 92 – also found at Tab 5 of the CEO information], is a public document reporting on serious allegations in connection with one of the applicants; it has nothing to do with confidential commercial information and should therefore be disclosed.

[44] Syfact is a case management software. The Syfact reports found at Tab 6 of the CEO information are internal documents from RBC personnel reporting on a number of separate incidents (QC20031457, E200507-0130, E200606-0365, E200905-0727, E200901-1422, E200906-0954, E201007-1012 and E201103-0567). A number of the Syfact entries indicate that the applicants had been advised of the information contained therein and that the incident was resolved after investigation. Since this information was not treated as confidential at the time of

its creation, it cannot be withheld under the confidential commercial information exception. In addition, since the Syfact reports include comments that contain potentially prejudicial hearsay information, the applicants have a strong quasi-constitutional interest in ensuring that any such damaging information concerning their reputation be corrected.

[45] Having reviewed the CEO information and considered the written and oral representations made by counsel in light of the parties' evidence and applicable legal principles, the Court has decided to allow, in part, the two applications. Accordingly, the Court will order the respondent to provide to the applicants, within 45 days of the present judgment, a copy of all undisclosed personal information related to the applicants it has in its possession, including the CEO information submitted by the respondent under seal to the Court, save and except the following confidential commercial information: a) the "Enhanced Due Diligence Report" (CEO 1423 and 1424 at Tab 1); and b) the internal email about account activity (CEO 1423 and 1424 pages 46-47) and the attached "Enhanced Due Diligence Report" (CEO 1423 and 1424 pages 81-91 found in Tab 4 of the CEO information). In the case that the personal information ordered to be disclosed by the Court contains the names of any individual or personal information about any individual, other than the applicants, it shall be redacted or blacked out by the respondent.

[46] I will now briefly address the issue of damages.

[47] The evidence of damages, if any, submitted by the applicants is unconvincing and does not support an award of damages (general or punitive). I agree with the respondent that there are

no general damages suffered by the applicants. I also agree with the respondent that this is not a case where punitive damages should be awarded. This Court has held that damages should only be awarded in cases where they are substantially justified and would further the objectives of PIPEDA (*Blum* at para 60). A deterrent effect on future breaches and the seriousness of the breach should also be considered (*Nammo* at para 76; *Girao v Zerek Taylor Grossman Hanrahan LLP*, 2011 FC 1070 at paras 46-48). In the present case, there is little evidence on the record that the applicants suffered hardship or difficulties in having to make alternative banking arrangements, other than a feeling of humiliation. In 2011, they were both clients at other banks and were able to transfer their funds elsewhere. In any event, there is insufficient evidence that the difficulties the applicants may have experienced with other financial institutions were caused by RBC's actions. Punitive damages are also inappropriate in this case, as the applicants have not proven that the withholding of information constituted behaviour that is "so malicious and outrageous as to warrant an award of punitive damages" (*Biron* at para 41). Moreover, based on the correspondence found in the record, RBC appears to have fully cooperated with the applicants and the OPCC, and did not materially benefit from the non-disclosure.

[48] Considering that the applications are allowed in part and the circumstances of this case, the applicants will be entitled to their costs against the respondent.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The applications are allowed in part;

2. The respondent is ordered to provide to the applicants, within 45 days of the present judgment, a copy of all undisclosed personal information related to the applicants that it has in its possession, including the "Counsel's Eyes Only Information" [CEO information] submitted by the respondent under seal to the Court, save and except the following confidential commercial information:

    a) The "Enhanced Due Diligence Report" (CEO 1423 and 1424 at Tab 1);

    b) The internal email about account activity (CEO 1423 and 1424 pages 46-47) and the attached "Enhanced Due Diligence Report" (CEO 1423 and 1424 pages 81-91 found in Tab 4 of the CEO information);

3. The name of any individual and the personal information about any individual, other than the applicants, mentioned in any document ordered to be disclosed to the applicants, shall be redacted or blacked out by the respondent;

4. The claims for general damages and punitive damages made by the applicants are dismissed; and

5. The costs are in favour of the applicants.

"Luc Martineau"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1423-14
STYLE OF CAUSE:	FRANK BERTUCCI v ROYAL BANK OF CANADA
AND DOCKET:	T-1424-14
STYLE OF CAUSE:	GIUSEPPE BERTUCCI v ROYAL BANK OF CANADA
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	JANUARY 12, 2016
JUDGMENT AND REAONS:	MARTINEAU J.
DATED:	MARCH 18, 2016

APPEARANCES:

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