

Federal Court



Cour fédérale

Date: 20251010

Docket: T-1954-25

Citation: 2025 FC 1678

Ottawa, Ontario, October 10, 2025

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

DIANE WEBSTER

Applicant

and

TAMMY ANNE MARTIN

Respondent

ORDER AND REASONS

I. Overview

[1] This is a motion brought by the Respondent for an order striking the Applicant's notice of application without leave to amend. The notice of application is brought under section 41 of the *Privacy Act*, RSC, 1985, c P-21 [Privacy Act] and seeks to challenge a deemed refusal by the Office of the Privacy Commissioner of Canada [OPC] to a request made by the Applicant for access to personal information held by Indigenous Services Canada [ISC].

[2] The Respondent asserts that the application is bereft of any possibility of success. They argue that the matter is moot because a release package has now been provided to the Applicant in response to her request. I agree. For the further reasons set out below, the notice of application is struck, without leave to amend, and the proceeding is dismissed accordingly.

II. **Background**

[3] On October 1, 2024, the Applicant made a request under the Privacy Act for information regarding records relating to herself under the control of ISC in file number P-2024-00167 [Request].

[4] In February 2025, the Applicant complained to the OPC alleging that the ISC had failed to respond to the Request.

[5] In a letter dated April 24, 2025, the OPC shared its investigation report with the Applicant. The OPC concluded the Applicant's complaint was well-founded as the ISC had exceeded the timeline to respond to the Applicant's request and deemed the matter a refusal.

[6] On June 9, 2025, the Applicant filed her notice of application in the present proceeding.

[7] ISC answered the Request on August 1, 2025, providing a release package to the Applicant.

[8] This motion to strike was brought on September 24, 2025.

[9] The Applicant has not responded to the motion although properly served with the motion materials.

III. Analysis

[10] The Court’s jurisdiction to strike a notice of application arises from its plenary jurisdiction to restrain the misuse or abuse of courts’ processes: *JP Morgan Asset Management (Canada) Inc v Canada (National Revenue)*, 2013 FCA 250 [*JP Morgan*] at para 48. The Court will strike a notice of application only in exceptional circumstances, where it is “so clearly improper as to be bereft of any possibility of success”: *David Bull Laboratories (Canada) Inc v Pharmacia Inc*, [1995] 1 FC 588 (CA) at 600. As stated in *JP Morgan* at paragraph 47, “[t]here must be a “show stopper” or a “knockout punch”– an obvious, fatal flaw striking at the root of the Court’s power to entertain the application”. The Court has long recognized that one such fatal flaw is the ground of mootness: *Gravel v Canada (Attorney General)*, 2024 FCA 155 at para 3.

[11] An application is moot where a judicial decision on the application will have no practical impact on the rights of the parties because there is no longer a live controversy affecting those rights: *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 [*Borowski*] at p 353. While the general policy is that the Court will decline to decide a proceeding that is moot, the Court maintains discretion to depart from this policy where other factors are satisfied; such as, where collateral consequences result in an adversarial context that prevails, where judicial economy favours a decision and resolution of an issue is in the public interest, and where rendering a decision does not depart from the Court’s traditional role: *Borowski* at pp 358-363.

[12] Pursuant to section 41 of the Privacy Act, any person who has been refused access to personal information that they requested under subsection 12(1) of the Privacy Act may, if a complaint has been made to the OPC, apply to the Court for a review of the matter after it receives the results of the OPC's investigation.

[13] The jurisdiction of the Court in respect of any such review is limited to ordering disclosure of the requested information, subject to any conditions deemed appropriate: Privacy Act, ss 48-49; *Cummings v Canada (Royal Mounted Police)*, 2020 FC 271 at paras 23-25 [Cummings], citing *Frezza v Canada (National Defence)*, 2014 FC 32 at paras 57-58.

[14] Where the institution answers the request for disclosure, as is the case here, there is no longer any refusal outstanding. The disclosure renders the matter moot, and the Court is without jurisdiction to grant relief: *Cummings* at para 25. Further, the matter remains moot even if the disclosure provided is viewed as inadequate: *Cummings* at para 27.

[15] In the circumstance that the Applicant is dissatisfied with ISC's disclosure, she may make a new complaint to the OPC. However, until she has done so, and the OPC has completed its investigation, the Court cannot grant any relief in respect of the adequacy of the disclosure: *Cummings* at para 33.

[16] In this instance, the disclosure made by the ISC in August 2025 rendered the application moot. There is no remaining adversarial context or practical utility that justifies proceeding with the application.

[17] Rather, I agree with the Respondent that the application should be struck without leave to amend.

[18] The Respondent requests its costs for the motion in the fixed amount of \$900, as calculated under the middle of column III of Tariff B of the *Federal Courts Rules*. I consider this request to be reasonable and appropriate in the circumstances. An order for such costs shall be made accordingly.

ORDER IN T-1954-25

THIS COURT ORDERS that:

1. The motion is granted, the application is struck without leave to amend, and the proceeding is dismissed accordingly.
2. The Respondent is awarded costs payable from the Applicant in the fixed amount of \$900.

"Angela Furlanetto"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1954-25

STYLE OF CAUSE: DIANE WEBSTER v TAMMY ANNE MARTIN

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO
RULE 369 OF THE *FEDERAL COURTS RULES***

ORDER AND REASONS: FURLANETTO J.

DATED: OCTOBER 10, 2025

WRITTEN REPRESENTATIONS BY:

None

FOR THE APPLICANT
(ON HER OWN BEHALF)

Alex Dalcourt

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Ottawa, Ontario

FOR THE RESPONDENT