

Federal Court



Cour fédérale

Date: 20100924

Docket: T-1621-09

Citation: 2010 FC 955

Ottawa, Ontario, September 24, 2010

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

MS. ANNETTE J. SOUP

Applicant

and

BLOOD TRIBE BOARD OF HEALTH

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] Annette Soup (Soup), whose privacy complaint led to a Supreme Court decision on solicitor-client privilege, has applied to this Court pursuant to s. 14(1) of the *Personal Information Protection and Electronic Documents Act* (Act or PIPEDA) for various remedies including damages.

[2] The Applicant was self-represented, and the Court's understanding of the relief claimed is for (a) the disclosure of an unredacted letter which Soup claims caused all her problems, (b) an

order requiring the Respondent to correct the “inaccuracies” in the letter, (c) the public posting of the correction, and (d) unspecified damages.

II. BACKGROUND

[3] Soup was dismissed from her employment as a community mental health worker by the Respondent in April 2002. She had been employed for eight months and was terminated following a performance evaluation.

[4] During the performance evaluation, the Applicant was informed that the Respondent had received a letter from an employee at the Kinai Women’s Shelter alleging that Soup had breached her duty of confidentiality in respect of two telephone conversations.

[5] Soup requested a copy of the letter so she could challenge its contents. The Respondent refused. The Applicant then requested a copy of her personnel file which was also refused; according to the Respondent, she already had copies of its contents.

[6] The Applicant filed a complaint with the Privacy Commissioner seeking access to her personnel file with the expectation that it would contain the breach of confidence letter. The complaint covered a number of other issues not particularly relevant to this current matter.

[7] The Respondent's position with respect to withholding the breach of confidence letter was that granting the Applicant access would reveal personal information of a third party. Moreover, the Applicant had already been informed of the contents of the letter during her evaluation.

[8] The Commissioner dismissed the bulk of the complaint but did conclude that the breach of confidence letter could be released if the personal information of the third party was severed. Following the Commissioner's recommendation, the Respondent severed the third party information and released the letter to the Applicant in redacted form.

[9] The Applicant, after much delay in the processing of her complaint (a fact for which the Court attributes no blame), now seeks the relief outlined.

III. ANALYSIS

[10] This is not a matter for which a standard of review analysis is required. Section 14 provides for a *de novo* review of the issues in respect of which the complaint was made. However, only those matters which properly fall within the Act may be considered even if the complaint is more broadly cast.

[11] The Court's remedial powers are limited to the relief set forth in s. 16:

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

(a) order an organization to

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

a) ordonner à l'organisation de

correct its practices in order to comply with sections 5 to 10;	revoir ses pratiques de façon à se conformer aux articles 5 à 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	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) award damages to the complainant, including damages for any humiliation that the complainant has suffered.	c) accorder au plaignant des dommages-intérêts, notamment en réparation de l'humiliation subie.

[12] Soup's real complaint is that she was terminated from her employment in part because of the allegations in the breach of confidence letter. However, she has taken no legal action for wrongful dismissal. The statutory right of action under the *Privacy Act* is not a substitute for an action for wrongful dismissal where dismissal is the source of the complaint.

[13] The Applicant also seeks to have the Respondent correct the allegations in the said letter. However, it is unclear how the Respondent could correct facts alleged, particularly in the context of the *Privacy Act*.

[14] Soup knows the substance of the allegations but it appears that she has not taken the usual steps of putting her view of the allegations or her side of the story "in the record". The Respondent

has already committed to removing the offending letter from the Applicant's personnel file. It is difficult to suggest that anything more could be done at this stage.

[15] Section 16 of the Act limits the Court's remedies of ordering corrective action or notice thereof to an organization's practices. The type of corrective remedy the Applicant requests is not related to the Respondent organization's practices. Practices generally mean the organization's usual business methods or procedures. As a result, the Applicant's request falls outside the scope of the Court's remedial power under s. 16 of the Act.

[16] While the Applicant's complaint to the Commissioner was upheld, it was upheld in respect of a narrow grounds of complaint. The Respondent's collection, use and disclosure of the Applicant's personal information were all deemed appropriate. In the absence of any other compelling evidence, the Court accepts the Commissioner's report as the factual basis for considering remedies.

[17] The only failing of the Respondent was the delay in providing a redacted copy of the offending letter. Any consideration of remedies, particularly damages, must take this limited breach and its reasons into consideration.

[18] There is no finding or evidence of malice or disregard in the Respondent's delay. The delay was significantly attributed to the problems of what and how to sever personal information of a third

party. The uncertainty of this process was more acute in the early days of the Act when this complaint originally arose. There was little practical or judicial guidance available at the time.

[19] The Respondent accepted that it had erred and amended its policies on severance/disclosure accordingly.

[20] The Applicant was unable to assist the Court in defining either the nature or quantum of her damages under the Act. Moreover, the losses she has experienced flow from her dismissal from employment; they do not relate to the invasion of her privacy nor to any humiliation caused by the delay in gaining access to the redacted version of the breach of confidence letter.

IV. CONCLUSION

[21] Therefore, the Court will not award any of the remedies requested. The Application is dismissed. The Court is confident that the Applicant's former employer would not seek to extract costs given the Applicant's troubled state. No costs will be awarded.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed without costs.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1621-09

STYLE OF CAUSE: MS. ANNETTE J. SOUP
and
BLOOD TRIBE BOARD OF HEALTH

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: September 21, 2010

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

DATED: September 24, 2010

APPEARANCES:

Ms. Annette Soup	FOR THE APPLICANT
Mr. Gary Befus	FOR THE RESPONDENT
Mr. Dylan Snowdon	

SOLICITORS OF RECORD:

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