

Federal Court



Cour fédérale

**Date: 20120919**

**Docket: T-520-11**

**Citation: 2012 FC 1095**

**[UNREVISED CERTIFIED ENGLISH TRANSLATION]**

**Ottawa, Ontario, September 19, 2012**

**PRESENT: The Honourable Mr. Justice Scott**

**BETWEEN:**

**GENEVIÈVE BIRON**

**Applicant**

**and**

**RBC ROYAL BANK**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Introduction**

[1] Geneviève Biron (Ms. Biron) is asking the Court to order the Royal Bank of Canada [RBC] to pay damages under sections 14 and 16 of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 [Act], for disclosing information regarding her credit card statements.

[2] For the following reasons, Ms. Biron's application is allowed.

## **II. Facts**

[3] Ms. Biron holds a Visa credit card issued by RBC. Ms. Biron jointly holds this card with her spouse, Sylvain Poirier (Mr. Poirier).

[4] In the divorce proceedings between Mr. Poirier and his ex-wife, before the Superior Court of Quebec, District of Montréal, counsel for Mr. Poirier's ex-wife, Miriam Grassby, summoned RBC by way of four *subpoenas duces tecum*. She required that one of the bank's representatives appear and provide documents regarding Mr. Poirier's accounts. Among these documents were the statements of Ms. Biron and Mr. Poirier's joint credit card.

[5] The first subpoena, dated October 29, 2007, required that RBC provide the monthly statements of all credit cards in Mr. Poirier's name since April 1, 2007. On December 4, 2007, a representative of RBC, Joanne Iarusso, appeared before the Superior Court of Quebec and produced the monthly joint credit card statements.

[6] On February 11, 2008, Ms. Biron complained to RBC about the disclosure of her personal information related to the credit card account. In her letter dated February 11, 2008, Ms. Biron wrote as follows:

[TRANSLATION]

On December 4, 2007, RBC Royal Bank disclosed my personal information related to my account without my consent and without the law allowing or requiring it. My personal information was disclosed to Myriam Grassby, counsel for my spouse's ex-wife, in response to a request that does not concern me.

Being able to trust you to handle my personal information conscientiously and securely and to never disclose it to a third party without my consent or without you being compelled to do so by the judgment of a court is of the utmost importance to me.

Since the dispute between my spouse and his ex-wife has not yet been resolved, I would ask you to immediately take any measures that may be required to protect my personal information in the event that the situation I have just described should repeat itself.

[7] A second subpoena, dated February 18, 2008, again required RBC to provide the monthly statements of all the credit cards held by Mr. Poirier as of November 1, 2007. Another representative of RBC, Carmen Bouchard, appeared at the Montréal Court House on March 11, 2008. Mr. Poirier objected to any information regarding Ms. Biron being disclosed. However, after some discussion, Ms. Grassby and Mr. Poirier told Ms. Bouchard that she could hand over the documents requested in Ms. Grassby's subpoena. Ms. Bouchard gave the documents to Ms. Grassby and Mr. Poirier. She asked Mr. Poirier to sign the consent form regarding RBC's disclosure of the information and documents required by the subpoena. Mr. Poirier signed the form, adding the note [TRANSLATION] "I object to the information regarding Ms. Biron" (see the Respondent's Record at page 19, Exhibit CB-2).

[8] On February 19, 2008, Ms. Iarusso wrote a letter to Ms. Biron to explain that RBC had to comply with the *subpoena duces tecum* dated October 29, 2007, and to report to the Court with the

required documents. She added that she had given the documents to counsel for the parties, in accordance with section 7 of the Act.

[9] On February 26, 2008, Ms. Biron wrote to RBC a second time, reiterating her objection to the disclosure of her personal information in the context of a divorce proceeding between Mr. Poirier and his ex-wife and stating that only a court was able to order the disclosure of her personal information.

[10] On March 14, 2008, Julie Dupont of RBC replied to her. She explained that, when RBC gave the documents to the Superior Court on December 4, 2007, and March 11, 2008, it was acting in compliance with the Act, since Ms. Biron had not challenged the *subpoenas duces tecum*.

[11] On April 30, 2008, Ms. Biron filed a complaint against RBC with the Office of the Privacy Commissioner, alleging that, through its actions, the bank was violating her right to privacy and to the protection of her personal information.

[12] A third subpoena was served on November 20, 2008, requiring that RBC provide the monthly statements of all accounts held by Mr. Poirier in his personal name or jointly with others. On December 15, 2008, Ms. Bouchard again reported to the Court House, with the documents required by the subpoena. Mr. Poirier, before the Superior Court judge, objected to the filing of the joint credit card statements. Ms. Grassby asked the judge to allow her a few minutes to strike out the information regarding Ms. Biron. The judge agreed to Ms. Grassby's request.

[13] On April 8, 2009, RBC received a letter from Hughes Simard, an investigator with the Office of the Privacy Commissioner of Canada, informing it of the complaint filed by Ms. Biron under the Act and requesting a reply from the bank.

[14] On May 15, 2009, Kerry Lund, the director of Privacy and Information Risk at RBC, replied to Hughes Simard. Among other things, she explained that the documents containing Ms. Biron's information had been the subject of *subpoenas duces tecum* and that RBC had to disclose this information in accordance with paragraphs 7(3)(c) and 7(3)(i) of the Act and articles 280 and 284 of the *Code of Civil Procedure*, RSQ, c C-25.

[15] On March 30, 2010, RBC received the investigation report and recommendations of the Office of the Privacy Commissioner. The bank was invited to comment on this preliminary report. On May 10, 2010, Jeff C. Green, RBC's chief privacy officer, sent his reply to the Office of the Privacy Commissioner.

[16] Finally, a fourth subpoena was served on November 30, 2010, again requiring RBC to provide the monthly statements of all of Mr. Poirier's credit cards, both those in his name and those held jointly, as of November 1, 2008. Ms. Bouchard reported to the Montréal Court House on December 21, 2010, with the relevant documents. Before the Superior Court judge, Mr. Poirier again objected to the filing of the joint credit card statements. The judge ordered Ms. Bouchard to give all the documents to Ms. Grassby and to strike out any excerpts relating to Ms. Biron.

[17] On February 14, 2011, RBC received the final report of the Office of the Privacy Commissioner, which concluded that Ms. Biron's complaint regarding the March 11, 2008, disclosure of her personal information to Ms. Grassby in response to the second *subpoena duces tecum* was well founded.

[18] On March 28, 2011, Ms. Biron and Mr. Poirier gave notice to the RBB to pay them \$50,000 for damage suffered as a result of the disclosure of the statements of their joint credit card.

[19] On March 28, 2011, Ms. Biron and Mr. Poirier filed an action before the Federal Court for, among other things, an order to compel RBC to compensate Ms. Biron and Mr. Poirier for the damage and inconvenience they allegedly suffered under paragraph 16(c) of the Act.

[20] On a motion to attack irregularity and to strike dated May 30, 2011, the Court ordered that the action filed on March 29, 2011, be continued as an application under Part 5 of the *Federal Courts Rules* (SOR/98-106). The Court allowed the motion to remove Sylvain Poirier as a party to the proceeding, as applicant. Prothonotary R. Morneau also ordered Ms. Biron to serve and file, on or before June 9, 2011, an amended notice of application.

[21] In her amended application, Ms. Biron is claiming \$25,000 in damages, as follows:

- a. \$5,000 in damages for the difficulties and inconvenience endured and the time spent on helping her spouse defend himself against his ex-wife's allegations regarding the money spent using the credit card;
- b. \$10,000 in moral damages;

- c. \$10,000 in exemplary damages.

### III. Legislation

[22] Sections 14 and 16, and clause 4.3 of Schedule 1 to the Act stipulate as follows:

#### **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 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, in subsection 5(3) or 8(6) or (7) or in section 10.

#### **Time of application**

(2) A complainant must make an application within 45 days after the report or notification is sent or within any further time that the Court may, either before or after the expiry of those 45 days, allow.

#### **For greater certainty**

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

#### **Délai**

(2) La demande est faite dans les quarante-cinq jours suivant la transmission du rapport ou de l'avis ou dans le délai supérieur que la Cour autorise avant ou après l'expiration des quarante-cinq jours.

#### **Précision**

(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).

(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).

### **Remedies**

### **Réparations**

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

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

(a) order an organization to correct its practices in order to comply with sections 5 to 10;

a) ordonner à l'organisation de 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.

### **4.3 Principle 3 — Consent**

### **4.3 Troisième principe — Consentement**

The knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where inappropriate.

Toute personne doit être informée de toute collecte, utilisation ou communication de renseignements personnels qui la concernent et y consentir, à moins qu'il ne soit pas approprié de le faire.

Note: In certain circumstances

Note : Dans certaines



personal information can be collected, used, or disclosed without the knowledge and consent of the individual. For example, legal, medical, or security reasons may make it impossible or impractical to seek consent. When information is being collected for the detection and prevention of fraud or for law enforcement, seeking the consent of the individual might defeat the purpose of collecting the information. Seeking consent may be impossible or inappropriate when the individual is a minor, seriously ill, or mentally incapacitated. In addition, organizations that do not have a direct relationship with the individual may not always be able to seek consent. For example, seeking consent may be impractical for a charity or a direct-marketing firm that wishes to acquire a mailing list from another organization. In such cases, the organization providing the list would be expected to obtain consent before disclosing personal information.

circonstances, il est possible de recueillir, d'utiliser et de communiquer des renseignements à l'insu de la personne concernée et sans son consentement. Par exemple, pour des raisons d'ordre juridique ou médical ou pour des raisons de sécurité, il peut être impossible ou peu réaliste d'obtenir le consentement de la personne concernée. Lorsqu'on recueille des renseignements aux fins du contrôle d'application de la loi, de la détection d'une fraude ou de sa prévention, on peut aller à l'encontre du but visé si l'on cherche à obtenir le consentement de la personne concernée. Il peut être impossible ou inopportun de chercher à obtenir le consentement d'un mineur, d'une personne gravement malade ou souffrant d'incapacité mentale. De plus, les organisations qui ne sont pas en relation directe avec la personne concernée ne sont pas toujours en mesure d'obtenir le consentement prévu. Par exemple, il peut être peu réaliste pour une œuvre de bienfaisance ou une entreprise de marketing direct souhaitant acquérir une liste d'envoi d'une autre organisation de chercher à obtenir le consentement des personnes concernées. On s'attendrait, dans de tels cas, à ce que l'organisation qui fournit la liste obtienne le consentement des personnes concernées avant de communiquer des

renseignements personnels.

#### **IV. Issues**

- 1. Does the report of the Assistant Privacy Commissioner bind the Court?*
- 2. Did RBC violate the Act by disclosing the statements of the credit card account held jointly by Ms. Biron and Mr. Poirier?*
- 3. Is Ms. Biron entitled to damages under paragraph 16(c) of the Act?*

#### **V. Parties' positions**

##### **A. Ms. Biron's position**

[23] Ms. Biron submits that RBC violated subsections 5(1) and 5(3) of the Act and clauses 4.3 and 4.5 of Schedule 1 to the Act (Principles Set Out in the National Standard of Canada Entitled *Model Code for the Protection of Personal Information*). She also alleges that, by disclosing personal information to a third party, without her consent and without it being authorized by a court or under the Act, RBC violated her right to privacy under section 5 of the *Charter of Human Rights and Freedoms*, RSQ, c C-12 [the Quebec Charter], and articles 3, 35 and 37 of the *Civil Code of Québec*, SQ 1991, c 64.

[24] She submits that the Privacy Commissioner of Canada recognizes the merit of her complaint against RBC in her report. Since this report is not the subject of an application for judicial review

before the Court, it acquires the authority of *res judicata*. The Court must therefore consider it in its judgment.

[25] Considering the damage and inconvenience suffered as a result of this violation, Ms. Biron is asking the Court to award her the amounts claimed under paragraph 16(c) of the Act and section 49 of the Quebec Charter.

## **B. RBC's position**

[26] RBC first alleges that the report of the Privacy Commissioner of Canada does not bind the Court and that only a definitive judgment rendered by a court of competent jurisdiction in a contentious matter can constitute *res judicata*, relying on *Roberge v Bolduc*, [1991] 1 SCR 374 at pages 404 and 405). According to RBC, the Office of the Privacy Commissioner is not a court since it does not have any decision-making power under the Act and does not make decisions, but rather expresses opinions on the merit of complaints. RBC also refers to *Englander v Telus Communications Inc*, 2004 FCA 387 (QL) at para 71 [*Englander*], in support of its position. In *Englander*, the Federal Court of Appeal wrote that “[t]he Commissioner, in any event, is not a tribunal and has no decision-making power under the PIPED Act [the Act]. At best, the Commissioner can form an opinion on the issue and include it in his report. As the report is not a ‘decision,’ there can be no conflict with the decision of a court or tribunal found to have exclusive, concurrent or overlapping jurisdiction to determine the issue.”

[27] In an application under section 14 of the Act, the Court must, according to RBC, perform a *de novo* review of the facts of the matter and draw its own conclusions regarding the complaint to the Office of the Privacy Commissioner (see *Englander*, above at paras 47 and 48; and *Girao v Zarek Taylor Grossman, Hanrahan LLP*, 2011 FC 1070 (QL) at para 23 [*Girao*]).

[28] RBC also alleges that a *subpoena duces tecum* served in accordance with the *Quebec Code of Civil Procedure* legally requires a person to appear before the court to disclose the requested documents (see 9083-2957 *Québec inc c Caisse populaire de Rivière-des-Prairies*, [2004] JQ no 10136 at para 18). RBC further explains that it is the judge's role to determine whether documents are relevant (see *McCue c Younes*, [2002] JQ no 9269). In the absence of a challenge by Ms. Biron, RBC was obliged to produce the documents named in the subpoena before the Superior Court.

[29] RBC points out, moreover, that Mr. Poirier is authorized to represent Ms. Biron and to agree to the disclosure of her personal information appearing on the statements of their joint credit card. According to RBC, in his capacity as a lawyer and joint credit card holder, Mr. Poirier could represent Ms. Biron and is therefore solidarily liable with Ms. Biron for their obligations. RBC therefore did not violate the Act by providing the joint credit card statements, in accordance with clause 4.3 of Schedule 1 to the Act.

[30] RBC also submits that Ms. Biron is not entitled to damages for the following reasons: awarding compensatory damages is discretionary, and this discretion should only be exercised in the most egregious situations and where the breach has been one of a very serious and violating nature

(see *Girao*, above at para 42; *Nammo v TransUnion of Canada Inc*, 2010 FC 1284 (QL) at para 54 [*Nammo*]; and *Randall v Nubodys Fitness Centres*, 2010 FC 681 (QL) at paras 55-56 [*Randall*]).

[31] RBC's conduct in the present matter does not justify an award of damages since any violation of the Act resulted from an error in good faith. According to RBC, its representatives acted in good faith when disclosing the personal information before a judge of the Superior Court, in the absence of any challenge of the subpoena. Furthermore, RBC is of the opinion that Mr. Poirier was authorized to represent Ms. Biron and to agree on her behalf to the disclosure of the personal information contained in the statements of their joint credit card. RBC alleges that Ms. Bouchard was misled when Mr. Poirier told her verbally that she could provide Ms. Grassby with all of the private information without obtaining a Court order and without restriction as to any of the information in the statements regarding Ms. Biron.

[32] In addition, according to RBC, its conduct was not sufficiently violating for the Court to agree to award Ms. Biron punitive damages. RBC submits that punitive damages can be awarded only when specifically provided for by the Act. In the present matter, Ms. Biron claims that her right to privacy was violated. RBC relies on the decisions in *de Montigny v Brossard (Succession)*, [2010] 3 SCR 64 at paras 68 and 69 [*de Montigny*]; and *Quebec (Public Curator) v Syndicat national des employés de l'hôpital St-Ferdinand*, [1996] 3 SCR 211 at para 121, to argue that a remedy of punitive damages requires a demonstration of intentional interference with Charter rights. In the case at bar, according to RBC, there is no evidence on the record to allow the Court to award punitive damages.

## VI. Analysis

### *1. Does the report of the Assistant Privacy Commissioner bind the Court?*

[33] The report of the Assistant Privacy Commissioner does not bind the Court. The Federal Court of Appeal explained at paragraph 71 of *Englander* that “[t]he Commissioner . . . is not a tribunal and has no decision-making power under the [Act]. At best, the Commissioner can form an opinion on the issue and include it in his report. As the report is not a ‘decision,’ there can be no conflict with the decision of a court or tribunal found to have exclusive, concurrent or overlapping jurisdiction to determine the issue”. The Court must examine the conduct of RBC against which the complaint was filed (see *Girao*, above at para 23). Since this is a *de novo* review of the Commissioner’s findings, the Court is not bound by the report of the Privacy Commissioner (see also *Randall* at para 32, and *Nammo* at para 28, both above).

### *2. Did RBC violate the Act by disclosing the statements of the credit card account held jointly by Ms. Biron and Mr. Poirier?*

[34] RBC violated clause 4.3 of Schedule 1 to the Act, on March 11, 2008, when it disclosed the statements of Ms. Biron’s joint credit card account. The principle set out in clause 4.3 of Schedule 1 to the Act specifies that “[t]he knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where inappropriate”. The Court wishes to point out that “[i]n certain circumstances personal information can be collected, used, or

disclosed without the knowledge and consent of the individual. For example, legal . . . reasons” (see clause 4.3 of Schedule 1 to the Act). However, the following must also be remembered:

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

. . .

(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; . . . (see subsection 7(3) of the Act).

[35] Even though article 311 of the Quebec *Code of Civil Procedure* specifies that a “witness who has in his possession any document touching the matter in issue is bound to produce it on demand. Except in the case of an authentic writing, he must allow copies, extracts or reproductions to be made which, when certified by the clerk, have the same probative effect as the original”, Ms. Biron was neither a witness nor an interested party in the divorce proceeding between Mr. Poirier and his ex-wife. Moreover, the Court notes that Ms. Biron objected to the disclosures in her letters to RBC dated February 11, 2008, and February 26, 2008, noting in her second letter that the joint credit card [TRANSLATION] “has a distinct number making it possible to distinguish what I have spent, [and it] is unacceptable that my spouse’s spending cannot be separated from my own” (see the letter dated February 26, 2008, at page 81 of the Applicant’s Record).

[36] Furthermore, even if one accepts RBC’s argument that Mr. Poirier was at least implicitly authorized to represent Ms. Biron and to agree to the disclosure of her personal information, Mr. Poirier objected to the disclosure of this information, as appears from the form dated February 20, 2008 (see page 19 of the Respondent’s Record) and the transcript of his examination

out of Court on affidavit (see pages 106, lines 9 to 109, line 5). The Court therefore rejects RBC's argument that paragraphs 7(3)(c) and (i) of the Act apply in the case of the disclosure of March 11, 2008, since RBC ought to have obtained Ms. Biron's consent under clauses 4.3 and 4.5 of Schedule 1 to the Act. The Court cannot accept RBC's claim that Mr. Poirier first verbally consented to the disclosure of Ms. Biron's personal information and then withdrew this consent on March 11, 2008, since the evidence in the record, the testimonies of Ms. Biron and Mr. Poirier, contradict this (see the Respondent's Record, transcript G. Biron, page 96, lines 10 to 15, and page 97, lines 5 to 15; and transcript S. Poirier, page 106, lines 4 to 19). Moreover, this version of the facts, provided by the bank's representative, Carmen Bouchard, is not supported by any other evidence. It seems entirely improbable that Mr. Poirier, a lawyer, would agree to the disclosure in the knowledge that his spouse was opposed to it and had already taken steps to voice her objection to RBC in that regard.

### 3. *Is Ms. Biron entitled to damages under paragraph 16(c) of the Act?*

[37] In *Randall*, above, the Court writes as follows about the damages awarded under section 16 of the Act:

[55] Pursuant to section 16 of the PIPEDA [the Act], an award of damages is not to be made lightly. Such an award should only be made in the most egregious situations. I do not find the instant case to be an egregious situation.

[56] Damages are awarded where the breach has been one of a very serious and violating nature such as video-taping and phone-line tapping, for example, which are not comparable to the breach in the case at bar: *Malcolm v Fleming* (BCSC), Nanaimo Registry No S17603, [2000] BCJ No 2400; *Srivastava c Hindu Mission of Canada (Québec) Inc.* (QCA), [2001] RJQ 1111, [2001] JQ no 1913.



[38] The alleged damages must also result directly from the fault committed (see *Stevens v SNF Maritime Metal Inc*, 2010 FC 1137 at paras 28 and 29). The Court notes further that awarding damages under section 16 of the Act is discretionary (see *Nammo*, above).

[39] As to punitive damages, the Supreme Court of Canada instructs that these “are restricted to advertent wrongful acts that are so malicious and outrageous that they are deserving of punishment on their own” (see *Honda Canada Inc v Keays*, 2008 SCC 39 at para 62). In *de Montigny*, the Supreme Court stated as follows:

[47] While compensatory damages are awarded to compensate for the prejudice resulting from fault, exemplary damages serve a different purpose. An award of such damages aims at expressing special disapproval of a person’s conduct and is tied to the judicial assessment of that conduct, not to the extent of the compensation required for reparation of actual prejudice, whether monetary or not. As Cory J. stated:

Punitive damages may be awarded in situations where the defendant’s misconduct is so malicious, oppressive and high-handed that it offends the court’s sense of decency. Punitive damages bear no relation to [page88] what the plaintiff should receive by way of compensation. Their aim is not to compensate the plaintiff, but rather to punish the defendant. It is the means by which the jury or judge expresses its outrage at the egregious conduct of the defendant.

(*Hill v Church of Scientology of Toronto*, [1995] 2 SCR 1130, at para 196)

[40] In the present proceeding, the Court is of the opinion that, in light of the facts of the case, the damages alleged by Ms. Biron can be tied to RBC’s error. The Court is of the opinion, moreover, that it must consider the fact that Ms. Biron asked RBC to stop disclosing her personal information on two occasions. RBC violated its obligations under subsection 7(3) of the Act by failing to

properly protect the personal information of one its clients, a disinterested third party in the divorce proceeding between Mr. Poirier and his ex-wife.

[41] Ms. Biron is also claiming punitive damages in the amount of \$10,000. There is, however, no evidence on record demonstrating that RBC committed acts against Ms. Biron that were so malicious and outrageous as to warrant an award of punitive damages.

[42] The only evidence submitted by Ms. Biron in support of her total claim for \$15,000 in damages, that is, \$5,000 for distress and inconvenience and \$10,000 for moral damages, is limited to the representations she had to make to the Privacy Commissioner, the letters sent to RBC and the time spent in helping her spouse in defending himself against his ex-wife's allegations resulting from the review of the money spent using the joint credit card.

[43] The Court therefore concludes that, given that Ms. Biron, as a third party in a divorce proceeding, objected twice to her personal information being disclosed, that she suffered humiliation under paragraph 16(c) of the Act and that the damages sought by Ms. Biron are directly related to RBC's fault, the Court awards \$2,500 plus interest and costs, to be paid to Ms. Biron by RBC.

## **VII. Conclusion**

[44] The Court dismisses Ms. Biron's application for an order compelling RBC to amend its procedures since RBC has already informed its employees of the update to its procedures following

the incidents in question, as appears from paragraph 28 of the Privacy Commissioner of Canada's final report.

**JUDGMENT**

For the aforementioned reasons, **THE COURT ORDERS** RBC to pay Ms. Biron the amount of \$2,500, plus interest and costs.

“André F.J. Scott”

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Judge

Certified true translation  
Johanna Kratz, Translator

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-520-11

**STYLE OF CAUSE:** GENEVIÈVE BIRON  
v  
RBC ROYAL BANK

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** July 4, 2012

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

**DATED:** September 19, 2012

**APPEARANCES:**

Geneviève Biron

FOR THE APPLICANT  
(SELF-REPRESENTED)

Christine Carron  
Brian John Capogrosso

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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FOR THE RESPONDENT