

Federal Court



Cour fédérale

Date: 20250827

Docket: T-2142-24

Ottawa, Ontario, August 27, 2025

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

CHANDANDEEP SHARMA

Applicant

and

**THE PRIVACY COMMISSIONER OF
CANADA**

Respondent

ORDER AND REASONS

I. Overview

[1] In the underlying application, the Applicant, a self-represented litigant, seeks judicial review of a decision of the Office of the Privacy Commissioner of Canada [OPC] refusing to investigate his complaint under the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 [PIPEDA], based on a lack of jurisdiction. The Respondent brings this motion to strike the Applicant's Notice of Application without leave to amend on three grounds: (i) the Notice is non-compliant with Rule 301 of the *Federal Courts Rules*, SOR/98-106 [Rules]; (ii) the

application fails to disclose a reasonable cause of action; and (iii) the relief sought by the Applicant is outside the Court's jurisdiction.

[2] I am granting the Respondent's motion, in part. I agree that the Notice of Application does not contain a clear and concise statement of the grounds to be argued as required by Rule 301. On that basis, I am striking the Notice in its entirety without prejudice to the Applicant filing a fresh as amended notice of application. In his written submissions on this motion, the Applicant explained what he intends to argue on the merits of the application regarding the interpretation and application of subsection 4(1)(a) of *PIPEDA*. As set out below, the Respondent has failed to meet the high threshold on a motion to strike and establish that the Applicant's interpretation arguments are doomed to fail. With respect to the remedies requested in the Notice of Application, I agree that the declaratory relief sought is beyond the Court's jurisdiction in the context of this application.

II. Background

[3] The Applicant is a former employee of 1320105 Ontario Inc., a Tim Hortons franchise in Ontario. Following a labour dispute with his employer, the Applicant made a request to 1320105 Ontario Inc.'s service provider, Push Operations, for access to certain personal information. When this information was not provided, the Applicant filed a complaint with the Information and Privacy Commissioner of British Columbia [BC Privacy Commissioner].

[4] The BC Privacy Commissioner told the Applicant that he had to request this information of his employer directly, as it controlled the information. When he did so, legal counsel for

1320105 Ontario Inc., Pallett Valo LLP, denied his request. The Applicant again complained to the BC Privacy Commissioner. Ultimately, the BC Privacy Commissioner advised him to file a complaint with the OPC under *PIPEDA* because the Tim Hortons franchise was in Ontario and Ontario does not have similar legislation.

[5] On July 11, 2024, the Applicant filed a complaint with the OPC against 1320105 Ontario Inc., Push Operations, and Pallett Valo LLP.

[6] In response, the OPC advised the Applicant that it did not have the jurisdiction to investigate his complaint against Tim Hortons because it is not a federally regulated industry or workplace, undertaking or business:

The Office of the Privacy Commissioner of Canada is responsible for overseeing the *Privacy Act* and the *Personal Information Protection and Electronic Documents Act* (PIPEDA). *The Privacy Act* covers the personal information handling practices of federal government institutions, while PIPEDA covers the private sector's personal information handling practices in the course of a commercial activity, with some exceptions.

If the personal information in question is the information of an *employee or former employee* of the organization being complained about, PIPEDA only applies where the organization is a *federal work, undertaking or business*.

We have carefully reviewed your allegations and have determined that we do not have the jurisdiction to investigate the matter you have brought forth, as Tim Horton [*sic*] is not a federally regulated industry or workplace.

Email dated July 31, 2024, Exhibit B to the Affidavit of Nadine Robinson sworn June 19, 2025, Respondent's Motion Record at 22

[Emphasis in original]

[7] In his Notice of Application, the Applicant challenges the OPC’s jurisdiction decision on the following four grounds:

- (i) Violation of *PIPEDA*: whether the OPC’s decision “failed to adequately address the breaches of *PIPEDA* by 1320105 Ontario Inc. and Push Operations”;
- (ii) Breach of Paralegal Rules of Conduct: whether “the conduct of the legal representatives involved in this case [...] breached the Paralegal Rules of Conduct”;
- (iii) Jurisdictional Authority: “[w]hether the jurisdictional authority of a federal tribunal to investigate an unregulated workplace for non-compliance with effective statutes can be limited by the absence of a federal regulation”; and
- (iv) Unreasonable Decision: whether “[t]he OPC’s decision was unreasonable in light of the evidence provided, which was not adequately considered”.

Notice of Application dated August 21, 2024 at paras 9–12

[8] The Applicant seeks the following relief: (i) an order quashing the OPC’s decision; (ii) an order directing the OPC to reinvestigate the matter; and (iii) a declaration that the actions of 1320105 Ontario Inc. and Push Operations are in violation of *PIPEDA* and other applicable laws: Notice of Application dated August 21, 2024 at paras 5–8.

III. Analysis

[9] The *Rules* do not expressly provide for the striking of a notice of application. The Court, however, has the plenary jurisdiction to strike an application to restrain the misuse or abuse of the court process: *Wenham v Canada (Attorney General)*, 2018 FCA 199 at para 33 [*Wenham*]; *Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250 at para 48 [*JP Morgan*].

[10] On a motion to strike, the moving party must demonstrate that the application is bereft of any possibility of success: *Iris Technologies Inc v Canada*, 2024 SCC 24 at para 26 [*Iris Technologies – SCC*]; *JP Morgan* at para 47. The motion judge must determine whether it is “plain and obvious” that the pleading discloses no reasonable cause of action or that the application is “doomed to fail”: *Wenham* at para 33. This is a high threshold, and a pleading should only be struck “in the clearest of cases”: *Iris Technologies – SCC* at para 26.

[11] The Respondent argues that the Notice of Application should be struck in its entirety without leave to amend because it suffers from both procedural and substantive failings. As such, they assert that the application is bereft of any chance of success.

A. *Non-compliance with Rule 301*

[12] Rule 301(e) requires that a notice of application set out a complete and concise statement of the grounds to be argued, including a reference to any statutory provision relied upon. A “complete” statement of the grounds means all the legal bases and material facts that support granting the relief sought must be pled: *JP Morgan* at para 39.

[13] While the grounds of review should be concise, they must not be bald assertions: *JP Morgan* at para 42. Specifically, “they must go beyond stating a conclusion of law to say how that conclusion is to be reached”: *Farah v Canada (Foreign Affairs)*, 2025 FC 679 at para 17 [*Farah*], citing *JP Morgan* at paras 42–43.

[14] The Federal Court of Appeal has made clear that these pleading requirements are “not merely technical”: *Canada (Attorney General) v Iris Technologies Inc*, 2021 FCA 244 at para 41 [*Iris Technologies – FCA*]. It ensures that a respondent receives adequate notice of the case against them so that they can meaningfully respond: *Iris Technologies – FCA* at para 41.

[15] A notice of application that fails to provide an adequate complete and concise statement of the grounds to be argued may be struck as non-compliant with Rule 301 and/or failing to disclose a reasonable cause of action: *JP Morgan* at paras 38–48; *Farah* at para 18; *Nicolas v Canada (Attorney General)*, 2022 FC 439 at para 32.

[16] Here, the Respondent argues that the grounds in the Applicant’s Notice of Application fail to comply with Rule 301(e) as they are bald assertions lacking the essential elements required to be pled. More particularly, they assert that “it is difficult to discern any legally cognizable argument from the Application or identify any specific material facts supporting the Applicant’s arguments”: Respondent’s Written Representations at para 28. I agree that three of the four grounds of review (as set out in paragraph 7 above) are unclear on their face. These are: (i) violation of *PIPEDA*; (ii) jurisdictional authority; and (iii) unreasonable decision. On this basis, the Notice of Application should be struck as failing to comply with Rule 301.

[17] Generally, where a pleading is struck based on drafting defects, leave to amend should be granted “unless it is plain and obvious that the defect cannot be cured by an amendment”: *Zanin v Ooma Inc.*, 2025 FC 51 at para 512; see also: *Canada (National Revenue) v Sharp*, 2022 FCA 138 at para 88.

[18] The Respondent asserts that the Notice of Application should be struck without leave to amend because it is plain and obvious that the application is doomed to fail on substantive grounds. As explained below, however, based on the Applicant's proposed statutory interpretation arguments as detailed in his written submissions filed on this motion, I am not satisfied that the Respondent has met the high threshold of establishing the application is bereft of any chance of success.

[19] The Applicant's fourth ground of review, alleging a breach of the Paralegal Rules of Conduct, does not suffer from the same procedural infirmity. However, this ground is bereft of any chance of success for substantive reasons. As the Respondent points out, the regulation of paralegals is outside the jurisdiction of both the OPC and the Court. This ground of review is therefore struck without leave to amend.

B. *It is not plain and obvious that the Applicant's statutory interpretation arguments are doomed to fail*

[20] *PIPEDA* provides privacy protections and rights to individuals, including a right to access personal information, and imposes obligations on private sector organizations. Section 4 of *PIPEDA* governs the application of Part I — the protection of personal information in the private sector:

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, or an

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

applicant for employment with, the organization and that the organization collects, uses or discloses in connection with the operation of a federal work, undertaking or business.

employés ou l'individu qui postule pour le devenir et qu'elle recueille, utilise ou communique dans le cadre d'une entreprise fédérale.

[21] The Respondent argues that the Applicant's complaint clearly does not fall within either subparagraph 4(1)(a) or 4(1)(b) of *PIPEDA* and that, as such, the OPC had no jurisdiction to investigate it. On this basis, they argue that the application is doomed to fail and should be struck in its entirety.

[22] I agree with the Respondent that subparagraph 4(1)(b) does not apply to any of the entities against whom the Applicant filed his *PIPEDA* complaint. None of them are a federal work, undertaking or business.

[23] The Applicant argues, however, that his application raises a justiciable issue concerning the application of subparagraph 4(1)(a) and the scope of "commercial activity". While his Notice of Application did not clearly articulate this as a ground of review, the Applicant details his arguments in response to this motion to strike: Applicant's Responding Memorandum of Fact and Law at paras 3, 6–7, 9, 10–15, 19. For example, he argues that the processing of his personal information by Push Operations, a third-party commercial platform "is inherently commercial, regardless of the nominal employer's regulatory classification": Applicant's Responding Memorandum of Fact and Law at para 14. He also argues that subparagraphs 4(1)(a) and 4(1)(b) "are not mutually exclusive": Applicant's Responding Memorandum of Fact and Law at para 7.

[24] On the other hand, the Respondent argues that subparagraph 4(1)(a) does not apply to employee information collected, used or disclosed for employment purposes. This information, they submit, “falls outside the scope of the personal information that can be collected, used, or disclosed ‘in the course of commercial activity’”: Respondent’s Written Representations at para 45. In support of this interpretation, the Respondent relies on a secondary source — Stephanie Perrin, Heather H. Black, et al, *The Personal Information Protection and Electronic Documents Act: An Annotated Guide* (Toronto: Irwin Law, 2001).

[25] Furthermore, the Respondent asserts that, in *Reference re Subsection 18.3(1) of the Federal Courts Act*, 2021 FC 723 [*Reference re Google*], aff’d 2023 FCA 200, this Court “not[ed] that provincially regulated workplaces were excluded from the scope of ‘commercial activity’”: Respondent’s Written Representations at para 46. In this regard, the Respondent specifically relies on the underlined portion in the following paragraph of that decision:

[47] This aspect of the analysis is important: it ensures that Parliament remains within the boundaries of its power to legislate. PIPEDA’s privacy protections were created within a regulatory scheme relying on the federal “general trade and commerce” power. Provincial legislatures may exclusively make laws in relation to property and civil rights, pursuant to section 92 of the *Constitution Act, 1867*, 30 & 31 Vict., c. 3 (U.K.) (as am. By *Canada Act 1982*, 1982, c. 11 (U.K.), Schedule to the *Constitution Act, 1982*, Item 1) [R.S.C., 1985, Appendix II, No. 5]. The requirement that PIPEDA only apply to commercial activity is therefore a critical constitutional guardrail. That is why subsection 4(1) specifically excludes non-commercial activities, provincially regulated workplaces and other entities beyond the reach of federal regulation. As held in *State Farm*, at paragraph 40, under PIPEDA, “personal information is regulated only insofar as it relates to how the Canadian economy functions and operates.”

[Emphasis added]

[26] With respect, this misconstrues the Court’s statement. At issue in that case was whether, in the operation of its search engine service, Google collected, used or disclosed personal information in the course of commercial activities within the meaning of paragraph 4(1)(a) of *PIPEDA: Reference re Google* at para 21. The Court did not consider the interplay between subparagraph 4(1)(a) and 4(1)(b), or opine, as the Respondent suggests, that provincially regulated employee workplaces were excluded from the scope of “commercial activity” in subparagraph 4(1)(a).

[27] Read in context, the Court was simply stating that *PIPEDA* was enacted pursuant to the federal trade and commerce power. In that vein, subparagraph 4(1)(a) excludes non-commercial activities and subparagraph 4(1)(b) excludes entities that are not federal works, undertakings or businesses. The Respondent is overstating what the Court held in *Reference re Google*.

[28] Finally, the Respondent relies on two Ontario labour relations decisions: Respondent’s Written Representations at paras 47–50. The first is a 2004 decision of a labour arbitrator — *McKesson Canada and Teamsters Chemical, Energy and Allied Workers Union, Loc 424 (Trinh) (Re)*, 2004 CanLII 94729 (ON LA) [*McKesson*]. The second is a 2006 decision of the Ontario Labour Relations Board that relies on *McKesson — International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers and its Local 736 v ES Fox Ltd*, 2006 CanLII 468 (ON LRB) [*International Association*].

[29] These decisions held that the collection, use or disclosure by an organization of the personal information of its employees solely for employment-related purposes does not

constitute a “commercial activity” under subparagraph 4(1)(a) of *PIPEDA: International Association* at para 13; *McKesson* at paras 37–39. The adjudicators recognized that the definition of “commercial activity” in *PIPEDA* is broad but concluded that simply because “an organization carries on a commercial activity cannot, on its own, render the collection, use or disclosure of employee personal information for employment-related purposes into a commercial activity”: *International Association* at para 13; see also: *McKesson* at para 39.

[30] The Respondent acknowledges that these decisions are not binding on this Court but argues that they are nonetheless persuasive. This is an argument that should be considered on the merits of the application, not on a motion to strike. These labour relations decisions are over 20 years old and there have been developments in the statutory interpretation jurisprudence since.

[31] Based on the foregoing, I am not satisfied that the questions the Applicant proposes to raise about the statutory interpretation and application of subparagraph 4(1)(a) of *PIPEDA* are doomed to fail. These questions have yet to be considered by this Court and are best determined by an application judge on their merits: *Moreau v Air Canada*, 2025 FC 675 at para 21. Thus, the Applicant should be given an opportunity to file an amended notice of application raising these questions as grounds of review.

[32] If the Applicant chooses to file an amended notice of application, he must ensure that it complies with Rule 301 and sets out the legal bases and material facts that support granting the relief sought. In the circumstances, given the significant revisions required, it is more appropriate

that a fresh as amended notice of application be filed. This means that the new version of the notice of application should not include strikeouts.

C. *The Court's jurisdiction to grant the relief sought*

[33] A notice of application may be struck where the Court has no jurisdiction to grant the relief sought: *Wenham* at para 36; *JP Morgan* at paras 66, 92. Here, the Applicant seeks to set aside the OPC's jurisdiction decision. There is no question that the Court has the power to grant this relief under section 18.1(3) of the *Federal Courts Act*, RSC, 1985, c F-7.

[34] In addition, the Applicant seeks an order directing the OPC to "reinvestigate" the matter and a declaration that the actions of 1320105 Ontario Inc. and Push Operations are in violation of *PIPEDA* and other applicable laws. The Respondent asserts that the Court cannot grant either of these remedies.

[35] The Respondent argues that the Court does not have the "institutional capacity" to direct the OPC to reinvestigate. More particularly, they assert that granting this relief "would require that the Court read in 'employment related' personal information into s.4(1)(a)": Respondent's Written Representations at para 69. This argument should be left for consideration by the application judge. If the OPC's jurisdiction decision is indeed quashed, the application judge is best placed to determine whether any further remedies should be ordered.

[36] That said, I agree with the Respondent that the Court cannot grant the declaratory relief the Applicant seeks. If the OPC's decision is ultimately set aside on its merits, in accordance

with the statutory regime, it would be “premature” for the Court to declare that *PIPEDA* was breached: Respondent’s Written Representations at paras 70–72. This is because the Applicant’s complaint was not accepted for investigation based on a lack of jurisdiction.

[37] If an investigation is conducted under section 12 of *PIPEDA*, the Privacy Commissioner issues a report setting out their findings and non-binding recommendations. A complainant who is not satisfied with the Privacy Commissioner’s report may bring an application to this Court under subsection 14(1) of *PIPEDA*. This is a *de novo* proceeding and the onus is on the applicant to establish a breach of the Act: *Phillips v Capital One Bank (Canada Branch)*, 2021 FC 484 at para 32; *Blum v Mortgage Architects Inc*, 2015 FC 323 at paras 13, 44; *Kniss v Canada (Privacy Commissioner)*, 2013 FC 31 at para 28. In accordance with section 16, the Court has the jurisdiction to grant various remedies on such an application.

[38] Given there has not yet been an investigation under *PIPEDA* and the issuance of a report, the Court is without jurisdiction to grant the declaratory relief sought on this application. The Notice of Application is therefore bereft of any chance of success insofar as this relief is sought. As a result, this declaratory relief should not be included in the Applicant’s fresh as amended notice of application.

IV. Conclusion

[39] The Respondent’s motion to strike the Applicant’s Notice of Application is granted in part. While the Notice is struck in its entirety, the Applicant is granted leave to amend and file a

fresh as amended notice of application within 30 days of this Order in accordance with these Reasons.

[40] In his fresh as amended notice of application, the Applicant must set out a complete and concise statement of the grounds to be argued in his application, including all the legal bases and material facts that support the relief sought, in compliance with Rule 301(e) of the *Rules*.

[41] For clarity, the following grounds of review as set out in the Applicant's original Notice of Application are non-compliant with Rule 301: (i) violation of *PIPEDA*; (ii) jurisdictional authority; and (iii) unreasonable decision. The Applicant may however raise the statutory interpretation of subparagraph 4(1)(a) of *PIPEDA* as a ground of review in his amended application.

[42] The Applicant is precluded from raising the breach of the Paralegal Rules of Conduct as a ground of review in his amended application. With respect to the relief sought, the Applicant may not seek a declaration that the actions of 1320105 Ontario Inc. and Push Operations are in violation of *PIPEDA* and other applicable laws.

[43] Given the divided success on this motion, there is no order of costs.

ORDER in T-2142-24

THIS COURT ORDERS that:

1. The Respondent's motion is allowed in part.
2. The Applicant's Notice of Application is struck in its entirety, with leave to serve and file a fresh as amended notice of application within 30 days of this Order, in accordance with the Court's Reasons.
3. There are no costs.

“Anne M. Turley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2142-24

STYLE OF CAUSE: CHANDANDEEP SHARMA v THE PRIVACY
COMMISSIONER OF CANADA

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO, PURSUANT TO
RULE 369 OF THE *FEDERAL COURTS RULES*, SOR/98-106**

ORDER AND REASONS: TURLEY J.

DATED: AUGUST 27, 2025

WRITTEN REPRESENTATIONS BY:

Chandandeep Sharma

FOR THE APPLICANT
ON HIS OWN BEHALF

Rebecca De Sanctis
Sarah Speevak

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Office of the Privacy
Commissioner of Canada
Legal Services
Gatineau, Quebec

FOR THE RESPONDENT