

Case In Point

Procedural Power of Courts Not Constrained by PIPEDA

Date: December 28, 2016

In [Royal Bank of Canada v. Trang](#), the Supreme Court of Canada held that the *Personal Information Protection and Electronic Documents Act* (PIPEDA) does not interfere with the procedural powers of a court.

The decision arose out of a situation in which past judicial interpretation and application of PIPEDA had impeded the ability of the Royal Bank of Canada (RBC) to realize on its debt. RBC was a judgment creditor of the defendants and required a mortgage discharge statement to enable a sheriff's sale of the defendants' property. The defendants did not cooperate and RBC was unable to obtain the statement from them. Accordingly, RBC brought a motion to compel the defendants' mortgagee, the Bank of Nova Scotia, to produce the mortgage discharge statement. That motion was dismissed, a decision which was later upheld by the Ontario Court of Appeal.

The Supreme Court identified two questions to be addressed: (1) did the order sought by RBC constitute an "order made by a court" under section 7(3)(c) of PIPEDA; and (2) did the defendants impliedly consent to disclosure of the mortgage discharge statement. The Court answered both questions in the affirmative.

In finding in favour of RBC, the Supreme Court held that PIPEDA is essentially "consumer protection legislation for the digital economy" by virtue of being a federal statute that establishes rules governing the collection, use and disclosure of personal information by organizations in the course of commercial activities. In particular, the Court held that PIPEDA does not interfere with a court's power to make orders, including those for the production of records. Rather, the Court held that "the intention behind section 7(3) is to ensure that legally required disclosures are not affected by PIPEDA."

With respect to the second issue of implied consent, the Supreme Court found that the defendants had, in fact, impliedly consented to the disclosure of the mortgage discharge statement. In so finding, the Court pointed to Schedule 1, clause 4.3.6., of PIPEDA which acknowledges that consent for the purposes of the statute can be implied consent when the information is less sensitive and when disclosure would conform with the reasonable expectations of the party whose personal information is being reviewed. While the Court acknowledged that financial information is a type of private information that falls at the heart of a person's "biological core" (per *R. v. Cole*), it held that the degree of sensitivity is still subject to a contextual determination. As mortgage information is available in the public space, there would be a reduced degree of sensitivity.

In this decision, the Supreme Court reinforced that privacy law should not be interpreted in a way that allows individuals to avoid their legal obligations.