

APPLICATION

T-2228-05

FEDERAL COURT

BETWEEN:

PHILIPPA LAWSON

Applicant

ACCUSEARCH INC., dba ABIKA.COM

Respondent



NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this Application be heard at 90 Sparks Street, Ottawa, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the Application or to be served with any documents in the Application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of Application.

Copies of the *Federal Courts Rules* information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

December 19, 2005

Issued by: B. Labelle
(Registry Officer)

Address of local office 90 Elgin Street
 Ottawa, Ontario
 K1P 5B8

TO: AccuSearch Inc., dba Abika.com
 6812 Lupine Tr.
 Cheyenne, WY 82009

AND TO: Privacy Commissioner of Canada
 112 Kent St.
 Ottawa, ON K1A 1H3

I HEREBY CERTIFY that the above document is a true copy of the
original issued out of / issued in the Court on the 19th
day of December A.D. 20 05
Dated this 19th day of December 20 05
B. Labelle

B. Labelle
Registry Officer
Agent du greffe

APPLICATION

This is an Application for judicial review in respect of a decision of the Privacy Commissioner of Canada (the “Commissioner”). The Commissioner’s decision was in response to a complaint filed by the applicant pursuant to s. 11 of the *Personal Information Protection and Electronic Documents Act* (“*PIPEDA*”) on June 9, 2004, and resubmitted on December 20, 2004, against the respondent. In her decision, the Commissioner refused to investigate the complaint stating that she “lacked jurisdiction to compel U.S. organizations to produce the evidence necessary to conduct the investigation.” The Commissioner communicated the decision to the applicant by mail in a letter, dated November 18, 2005, signed by the Assistant Privacy Commissioner of Canada and received by the applicant November 21, 2005.

The applicant makes Application for:

1. An order quashing or setting aside the Commissioner’s decision that she lacked jurisdiction to investigate the complaint, and referring the decision back to the Commissioner for reconsideration in accordance with such directions as this Court considers appropriate.
2. An order declaring that the Commissioner has jurisdiction to investigate the complaint.
3. An order in the nature of mandamus requiring the Commissioner to:
 - a. Investigate the complaint in accordance with subs.12(1) of *PIPEDA*; and
 - b. Make a finding based on the results of such investigation.
4. An order for the costs of this Application.
5. Such further and other relief as this Honourable Court may consider just and equitable in the circumstances.

The grounds for the Application are:

1. The Commissioner has jurisdiction to investigate the complaint given the real and substantial connections between the subject-matter of the complaint and Canada;
2. The Commissioner erred in law by finding that she did not have the jurisdiction to investigate the complaint. In particular:
 - a. the Commissioner erred in
 - i) applying a test of “extraterritorial effect” to determine her jurisdiction to investigate the complaint when the appropriate test to establish jurisdiction is the “real and substantial connection” test; or, in the alternative,

- ii) wrongly applying the “real and substantial connection” test to the facts before her; and
 - b. the Commissioner erred in characterizing an alleged inability to compel a company with no physical presence in Canada to comply with Canadian law as a lack of jurisdiction to investigate the company’s practices.
3. The Commissioner erred in law by failing to investigate the complaint.
4. The Commissioner erred in law by wrongly and overly narrowly interpreting the scope of her investigatory powers. For example, the Commissioner erred in concluding that she could not investigate the complaint without the ability to compel the respondent to supply evidence.
5. The Commissioner based her decision not to investigate the complaint on erroneous findings of fact that she made in a perverse or capricious manner or without regard to the material before her by ignoring, overlooking, or otherwise failing to consider evidence on the record before her of real and substantial connections between the complaint and Canada.
6. The Commissioner refused to exercise her jurisdiction under *PIPEDA* by refusing to investigate the applicant’s complaint.
7. The applicant relies on sections 3, 4, 5, 11, 12, 13, 14, 16, 18, 20 and 22 of *PIPEDA*; sections 18, 18.1(1), 8.1(3)(a) and (b), 18.1(4)(a), (c) and (d) of the *Federal Courts Act*, R.S.C. 1985, c. F-7; and on Part 5 and subrule 400(1) of the *Federal Court Rules*, 1998, SOR/98-106 (as amended).

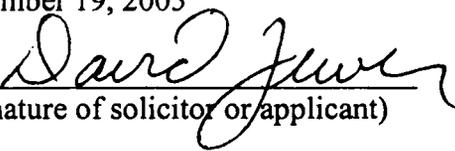
This Application will be supported by the following material:

1. Affidavit of Philippa Lawson (not yet sworn).
2. Such further and other material as counsel may advise and this Honourable Court may permit.

The applicant requests the Commissioner to send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the Commissioner to the applicant and to the Registry:

Her entire record in file #6100-01441 and all notes, documents, memoranda and any other material relevant to the applicant’s complaint.

December 19, 2005



(Signature of solicitor or applicant)

David Fewer
Solicitor for the Applicant
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University of Ottawa, Faculty of Law
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Ottawa, Ontario K1N 6N5
Canada