

FEDERAL COURT

IN THE MATTER OF a reference pursuant to subsection 18.3(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7 of questions or issues of law and jurisdiction concerning the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 that have arisen in the course of an investigation into a complaint before the Privacy Commissioner of Canada

BETWEEN:

THE PRIVACY COMMISSIONER OF CANADA

Applicant

PUBLIC FACTUM OF THE PRIVACY COMMISSIONER OF CANADA

September 08, 2020

**Peter Engelmann
Colleen Bauman
Goldblatt Partners**
500 - 30 rue Metcalfe St.
Ottawa, Ontario K1P 5L4

Tel: (613) 482-2452
(613) 482-2463
Fax: (613) 235-3041
Email : pengelmann@goldblattpartners.com
cbauman@goldblattpartners.com

**Regan Morris
Kelly Stephens
Office of the Privacy Commissioner of Canada**
30 Victoria Street
Gatineau, Quebec K1A 1H3

Tel.: (613) 219-9016
(613) 818-2238
Fax: (819) 994-5424
Email : Regan.Morris@priv.gc.ca
Kelly.Stephens@priv.gc.ca

Legal Counsel for the Applicant, the Privacy Commissioner of Canada

TO :	<p>Federal Court Registry Thomas D'Arcy McGee Building 90 Sparks Street Ottawa, ON K1A 0H9</p> <p>Telephone No.: (613) 992-4238 Facsimile No.: (613) 952-3653</p>	
AND TO :	<p>McInnes Cooper Purdy's Wharf, Tower II 1300-1969 Upper Water Street Halifax, NS B3J 2V1</p> <p>David T.S. Fraser Telephone No.: (902) 444-8535 Facsimile No.: (902) 425-6350 Email: david.fraser@mcinnescooper.com</p> <p>Counsel for Google LLC</p>	<p>Tyr LLP 108 John Street Toronto, ON M5T 1X5</p> <p>James D. Bunting Anisah S. Hassan Telephone No.: (416) 367-7433 Facsimile No.: (416) 863-0871 Email: jbunting@tyrllp.com ahassan@tyrllp.com</p> <p>Counsel for Google LLC</p>
AND TO :	<p>Mark Phillips 4104 rue Saint-Denis, Montréal, QC H2W 2M5</p> <p>Telephone No.: (514) 441-5054 Facsimile No.: (438) 801-0347 Email: avocat@markphillips.ca</p> <p>Counsel for the Complainant</p>	<p>Paliare Roland Rosenberg Rothstein LLP 155 Wellington Street West, 35th Floor Toronto, ON M5V 3H1</p> <p>Michael Fenrick Charlotté Calon Telephone No.: (416) 646-7481 Facsimile No.: (416) 646-4301 Email: Michael.fenrick@paliareroland.com Charlotte.Calon@paliareroland.com</p> <p>Counsel for the Complainant</p>

<p>AND TO :</p>	<p>Attorney General of Canada Department of Justice 50 O'Connor Street, Suite 500 Ottawa, ON K1A 0H8</p> <p>Christopher M. Rupar Kirk G. Shannon Fraser Harland Telephone No.: (613) 670-6290 (613) 670-8515 Facsimile No.: (613) 954-1920 Email: Christopher.rupar@justice.gc.ca Kirk.Shannon@justice.gc.ca Fraser.harland@justice.gc.ca</p> <p>Counsel for the Attorney General of Canada</p>	
<p>AND TO :</p>	<p>Canadian Broadcasting Corporation/ Société Radio Canada 250 Front Street West Toronto, ON M5V 3G7</p> <p>Sean Moremen Telephone No.: (416) 205-6494 Email: sean.moreman@cbc.ca</p>	<p>Fasken Martineau Dumoulin, SECRI, SRL 800 Place Victoria, Suite 3700, CP 242 Montréal, QC H4Z 1E9</p> <p>Christian Leblanc Patricia Hénault Telephone No.: (514) 397-7545 Facsimile No.: (514) 397-7600 Email: cleblanc@fasken.com phenault@fasken.com</p> <p>Counsel for the Intervener, Canadian Broadcasting Corporation/Société Radio Canada</p>
<p>AND TO :</p>	<p>Samuel-Glushko Canadian Internet Policy and Public Interest Clinic (CIPPIC) University of Ottawa, Faculty of Law Common Law Section 57 Louis Pasteur Street Ottawa, ON K1N 6N5</p> <p>Tamir Israel Telephone No.: (613) 562-5800 ext 2914 Facsimile No.: (613) 562-5417 Email: tisrael@cippic.ca</p>	<p>Trudel Johnston & Lespérance 750 Cote de la Place d'Armes, Bureau 90 Montréal, QC H2Y 2X8</p> <p>Alexandra (Lex) Gill Telephone No.: (514) 871-8385 ext 219 Facsimile No.: (514) 871-8800 Email: lex@tjl.quebec</p>

INDEX

<u>Title</u>	<u>Page No.</u>
Memorandum of Fact and Law of the Privacy Commissioner of Canada, dated September 8, 2020.....	1-30
OVERVIEW.....	1-3
I. FACTS.....	3-10
a) The background to the reference	3-5
b) How Google’s search engines operates.....	5-8
c) Google earns revenue by displaying advertisements in search results.....	8-10
II. POINTS IN ISSUE	10
III. SUBMISSIONS.....	11-30
1) PIPEDA’s provisions must be read in context and with its remedial goals in mind	11-12
2) PIPEDA was enacted to protect privacy in the face of new online technologies.....	12-14
3) Parliament adopted a broad, flexible and technology neutral scheme to achieve PIPEDA’s remedial goals	14-16
4) Google’s search engine collects, uses and discloses personal information	16-22
a. Text – s. 4(1)(a).....	16-18
b. Statutory context.....	18-19
c. Purpose	19-22
5) Google’s search engine collects, uses and discloses personal information in the course of commercial activities.....	22-26
6) Google’s search engine does not satisfy the journalistic purposes exemption	26-29
7) Other issues, including freedom of expression, remain to be considered in the underlying investigation	30
IV. ORDER SOUGHT	30
V. LIST OF AUTHORITIES	31-33

FEDERAL COURT

IN THE MATTER OF a reference pursuant to subsection 18.3(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7 of questions or issues of law and jurisdiction concerning the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 that have arisen in the course of an investigation into a complaint before the Privacy Commissioner of Canada

BETWEEN:

THE PRIVACY COMMISSIONER OF CANADA

Applicant

MEMORANDUM OF FACT AND LAW OF THE PRIVACY COMMISSIONER OF CANADA

OVERVIEW

1. This reference asks whether Google LLC's ("**Google**") search engine is subject to Part 1 of the *Personal Information Protection and Electronic Documents Act* ("**PIPEDA**" or the "**Act**").¹ More specifically, it asks whether Google, via its search engine, collects, uses and discloses personal information in the course of commercial activities and whether it is exempt from PIPEDA because its search engine activities have an exclusively journalistic purpose. The Privacy Commissioner of Canada ("**Privacy Commissioner**") submits that the text, context and purpose of PIPEDA all indicate that the Act applies to Google's search engine.

2. PIPEDA was enacted in response to concerns that technology was increasingly allowing for the circulation and exchange of personal information, especially online. To address these concerns, PIPEDA was designed to apply broadly to organizations that collect, use and disclose personal information in the course of commercial activities. It was drafted in a technology neutral manner to apply to all types of collections and to new business models as they emerge.

3. Google's search engine is an online business that, by its nature, involves the collection, use

¹ S.C. 2000, c. 5 ("PIPEDA").

and disclosure of personal information and is the type of activity to which PIPEDA was intended to apply. In order to provide search results, Google scans, copies, and indexes billions of webpages that make up the internet, including personal information found on those pages. When an individual's name is searched, Google consults its index and displays what it considers to be relevant information relating to that individual in the form of search results. Google search results can present a detailed, prominent and comprehensive profile of an individual, available for all to view, in a matter of seconds. By collating and presenting information that may not otherwise be readily located, Google can magnify the harms associated with the wide exposure of personal information online.

4. In performing this activity, Google exercises complete control over its search engine index and search results. Google determines, via proprietary algorithms, what search results it recommends to users and in what order they are displayed. At its discretion, Google may prevent content from appearing in search results or cause it to appear less prominently. In brief, Google is not simply a neutral conduit.

5. Google's search engine is also a commercial activity. Google generates billions of dollars from its search engine by selling advertising space alongside search results. Its ability to sell ads depends on its ability to provide useful search results and thereby attract users. Google's success in doing so has made its search engine one of the most widely used in the world and Google one of the most successful businesses of the modern era. The ads Google displays are contextual and are determined by, for instance, the search terms used and a user's past searches. Google's ads are inextricably linked to its search engine.

6. Google's search engine is also not exempt from PIPEDA as a "journalistic" activity. Google's purposes are not journalistic, and certainly not exclusively so as required by s. 4(2)(c) of PIPEDA. Google's search engine indexes and returns links to all types of content, regardless of whether it is journalistic or not. Google's main purpose in providing search results is to recommend content that is relevant to a user's search, regardless of what that content may be. The fact that media organizations may rely in part on Google's search engine as a means for the public to find their articles does not make Google's purposes journalistic. The concept of journalism cannot be stretched so far to embrace every activity that has to do with conveying information.

7. In short, the text, context, and purpose of PIPEDA all indicate that Google’s search engine falls within its ambit. This conclusion does not mean, however, that PIPEDA requires Google to remove the search results at issue in the underlying complaint. This issue, including the important freedom of expression concerns Google has raised, remains to be considered in the Privacy Commissioner’s investigation.

I. FACTS

a) The background to the reference

8. In June 2017, the Office of the Privacy Commissioner (“**OPC**”) received a complaint alleging that Google is contravening PIPEDA by continuing to prominently display links to online news articles originally published [REDACTED] concerning the Complainant when his name is searched using Google’s search engine (the “**complaint**”).² [REDACTED]

9. When the Complainant’s name is searched using Google, information from the articles is displayed on the first page of search results and reveals the following information about him:

- [REDACTED]

² Affidavit of Natalie Lachance, affirmed May 14, 2019 (“Lachance Affidavit”) at para. 3 and Complaint to OPC, Exhibit A to the Lachance Affidavit.

³ Google search results for the Complainant’s name, Exhibit C to the Confidential Version of the Lachance Affidavit.

10. The Complainant alleges that the information Google displays in its search results is outdated and inaccurate and discloses sensitive information such as his sexual orientation and a serious medical condition. He says that the fact that Google prominently links these articles to his name in search results has caused, and continues to cause him, direct harm, including physical assault, lost employment opportunities and severe social stigma.⁴ At the OPC's suggestion, the Complainant approached Google to request that it remove the links in question from searches for his name but Google declined to do so.⁵

11. In January 2018, the OPC published a Draft Position Paper on Online Reputation (“**the Draft Position Paper**”) as part of an ongoing consultation on how privacy law could address harms to individuals resulting from the increased exposure of personal information online. One of the views set out by the OPC in the Draft Position Paper was that PIPEDA applied to search engines and could, in certain circumstances, require them to remove links from search results for searches of an individual's name.⁶ The draft paper was published for comment and resulted in a number of submissions to the OPC.⁷ It remains a draft.⁸

12. In early March 2018, Google responded to the complaint.⁹ Google took the position that PIPEDA does not apply to it in the circumstances because the operation of its search engine service is not a commercial activity within the meaning of s. 4(1)(a) of PIPEDA. Google also asserted that in any event its search engine service is exempt from PIPEDA by virtue of s. 4(2)(c) of the Act because it is a journalistic or literary operation (together, “**the preliminary jurisdiction issues**”). Finally, Google argued that, in the alternative, any interpretation of PIPEDA that would require it to remove lawful, public content from its search results would be contrary to s. 2(b) of the *Charter*.

13. In October 2018, after considering Google's objections, the Privacy Commissioner initiated the present reference, which referred the preliminary jurisdiction issues to this Court for determination. In doing so, the Privacy Commissioner did not refer the issue of whether PIPEDA

⁴ Schedule 1 to Complaint to OPC, paras. 13-17, Exhibit A to the Lachance Affidavit.

⁵ Email from Mark Phillips to OPC dated July 19, 2017, Exhibit D to Lachance Affidavit; Preliminary Findings of Fact - Jurisdictional Issues at para. 8, Exhibit R to the Lachance Affidavit.

⁶ Draft Position Paper, Exhibit G to the Lachance Affidavit.

⁷ Lachance Affidavit, paras. 13-15.

⁸ Lachance Affidavit, para. 16.

⁹ Letter from David Fraser to OPC, dated March 2, 2018, Exhibit F to the Lachance Affidavit.

required the search results at issue to be removed and, if so, whether this would violate s. 2(b) of the *Charter*.

14. In addition to the underlying complaint in this proceeding, the OPC has also received several other complaints from individuals requesting the removal of search results from searches of their name. These complaints remain in abeyance pending the outcome of this reference.¹⁰

15. In support of the reference, the OPC made findings of fact regarding the operation of Google's search engine.¹¹ These findings were based on submissions of Google and the Complainant, as well as public documents, including a number published by Google. Both Google and the Complainant also provided comments on a draft version of the OPC's findings, which were taken into account and which form part of the record in this reference.¹² The OPC's findings of fact along with certain background materials filed by the OPC and the parties, with leave of this Court, make up the factual basis for the reference.¹³

b) How Google's search engine operates

16. Google's search engine allows individuals to search for content, including text, images and videos, found on webpages that make up the World Wide Web. In order to provide this service, Google copies information, including personal information, from webpages (an activity referred to as "crawling"), indexes the information, and displays it in search results. Google states that its overall mission is "to organize the world's information and make it universally accessible".¹⁴

17. In order to copy the content of webpages, Google uses automated "crawlers". The crawlers access and copy the content found on publicly accessible webpages, including personal information, and transmit it to Google's servers for it to be indexed.

18. Google determines which websites it crawls and the frequency with which it does so.

¹⁰ Lachance Affidavit, at para. 26.

¹¹ Preliminary Findings of Fact - Jurisdictional Issues, Exhibit R to the Lachance Affidavit.

¹² Lachance Affidavit, at paras. 19-23 and Exhibits N and O to the Lachance Affidavit.

¹³ Order of Prothonotary Tabib, dated November 2, 2018, Court File: T-1779-18, para. 7 and Order of Prothonotary Steele, dated July 24, 2020, Court File: T-1779-18 (motions to file additional evidence).

¹⁴ Preliminary Findings of Fact - Jurisdictional Issues at para. 23, Exhibit R to the Lachance Affidavit and Google, "About", Exhibit S-4 to the Lachance Affidavit.

Google states that it does not accept payment to crawl a website.¹⁵ However, Google voluntarily honours requests by website operators to opt-out of being crawled, which can be made via a robots.txt file or other coding placed on a webpage by a website operator.¹⁶

19. The information gathered by Google’s crawlers is added to an index controlled by Google. Indexing serves to organize the information retrieved so that it can be searched. Google states that its index contains “an entry for every word seen on every web page we index” and that it reflects the content of “hundreds of billions of webpages.”¹⁷ Google also stores a copy of webpages, known as a “cached” copy, which users can access in case the page is not available.¹⁸ To the extent that a webpage Google has crawled contains personal information, this information will be stored in Google’s index and cached copies of the webpage.

20. When a user enters a search query, Google’s proprietary computer algorithms cross-reference its index and identify the content that Google considers to be relevant to the query. Its algorithms take into account a number of factors, including the search terms used, a user’s past searches, their location, and the perceived quality of a webpage to determine which search results are, in Google’s view, most relevant to a user.¹⁹

21. Google then displays the search results in order of perceived relevance. Search results include webpage titles, links to the webpages and/or Google’s cached copies, and textual “snippets” generally showing the search terms in the context of the webpage.²⁰

22. Search results appear under the tab “All” and a Google search is not limited to particular types of content.²¹ Given the decentralized nature of the World Wide Web and the ease with which

¹⁵ Google, “How Search Organizes Information”, p. 1, Exhibit S-7 to the Lachance Affidavit.

¹⁶ Preliminary Findings of Fact - Jurisdictional Issues at para. 33, Exhibit R to the Lachance Affidavit.

¹⁷ Google, “How Search Organizes Information”, p. 2, Exhibit S-7 to the Lachance Affidavit.

¹⁸ Google, “View Web pages cached in Google Search Results”, p. 1, Exhibit S-8 to the Lachance Affidavit.

¹⁹ Google, “How Search Algorithms Work”, Exhibit S-9 to the Lachance Affidavit.

²⁰ Preliminary Findings of Fact – Jurisdictional Issues at para 35, Exhibit R to the Lachance Affidavit. See also Google search results for the Complainant’s name, Exhibit C to the Confidential Version of the Lachance Affidavit.

²¹ Preliminary Findings of Fact, para. 37, Exhibit R to the Lachance Affidavit. The general search engine function at issue in this reference is in contrast to a user expressly selecting the “News” tab or using Google’s News service, which is restricted to returning news media content.

websites can be created, the range of content that can be returned in search results is very broad.²²

23. When the search query is an individual's name, Google displays what it considers to be relevant information linked to that name in the form of search results. A search for an individual's name may return, for instance, content from personal blogs and websites, chatrooms, social media sites, websites of businesses, governments, non-governmental organizations, as well as news organizations.²³ The personal information that can be displayed in response to such searches is thus wide and varied and can lead to a detailed portrait of an individual.

24. Google exercises control over what information is displayed in its search results through at least two principal means. First, as noted above, Google's algorithms determine what search results to display in response to a user's search query, and in what order. The order in which information appears can be of importance since users may not look beyond the first few pages of search results. Google may, at its discretion, alter its algorithms so that certain types of websites are displayed lower down or higher up. One example is exploitative websites that republish police mugshots in order to charge for their removal. Google has stated that it will not remove these sites from search results but will actively downgrade them so that they appear lower in search results.²⁴

25. Second, Google removes webpages from its search results in accordance with Removal Policies it has established. For instance, Google indicates that it will remove certain types of personal information such as social insurance numbers, bank account or credit card numbers, sexually explicit images that have been shared without consent, and confidential medical records.²⁵ As a result, this information is no longer returned in search results, notwithstanding the fact that it continues to exist online.

26. When Google removes information, it can prevent the webpage from appearing in any search results or only in response to specific search terms (e.g. an individual's name). For clarity,

²² Preliminary Findings of Fact - Jurisdictional Issues at para 40, Exhibit R to the Lachance Affidavit.

²³ Preliminary Findings of Fact - Jurisdictional Issues at para. 40, Exhibit R to the Lachance Affidavit.

²⁴ Olivia Solon, "Haunted by a mugshot: How predatory websites exploit the shame of arrest" *The Guardian* (12 June 2018), Exhibit S-16 to the Lachance Affidavit. Google has also, for instance, been fined by European competition authorities for its display and ranking of shopping search results and, as a result, altered its practices: Alphabet Inc., "Form 10-Q (for the quarterly period ended June 30, 2018)" at p. 26, Exhibit S-25 to the Lachance Affidavit ("Form 10-Q").

²⁵ Google, "Removal Policies", Exhibit S-13 to the Lachance Affidavit.

we will refer to the former as “de-indexing” and to the removal of search results only for specific search terms as “de-listing”.

27. In the European Union (“EU”), Google is required by law to de-list personal information in certain circumstances from search results for searches of an individual’s name. Examples of the types of information that Google has de-listed indicate the sheer range of information that turns up in search results. For instance, Google has removed a social media photo that was reposted without consent, medical information, sexual orientation, home addresses, and contact information.²⁶ According to research published by Google employees, requests “capture a spectrum of potentially personal information” that appear in Google search results and reflect in part a desire of individuals to “seek to control their digital footprint exposed through social networks and directory services.”²⁷ It is noteworthy that none of the top 20 websites for which delisting requests were made in the EU are news sites.²⁸ Overall, the vast majority (roughly 82%) of requests to delist webpages from Google search results relate to content that is not from a news site.²⁹

c) Google earns revenue by displaying advertisements in search results

28. Google is a for-profit corporation and one of the most successful technology businesses of the modern era. Its search engine is far and away the most dominant with some estimates suggesting that it is used to conduct 70-75% of all internet searches globally.³⁰ According to Google, its search engine is used to conduct millions of searches each day.³¹ The popularity of its search engine and its other products have made Google one of the most profitable corporations today. Google’s parent company reported that it earned approximately \$63.5 billion (USD) from Google in the first half of 2018 alone.³²

29. The bulk of Google’s revenue comes from advertising (roughly \$54.7 billion in the first

²⁶ Betram et al., “Three years of the Right be Forgotten”, pp. 11 – 12, Exhibit A to the Affidavit of Deanna Watters, affirmed June 14, 2019 (“Watters Affidavit”).

²⁷ Betram et al., “Three years of the Right be Forgotten”, p. 8, Exhibit A to the Watters Affidavit.

²⁸ Betram et al., “Three years of the Right be Forgotten”, p. 8 and Table 7, Exhibit A to the Watters Affidavit.

²⁹ Betram et al., “Three years of the Right be Forgotten”, Table 8, p. 9, Exhibit A to the Watters Affidavit.

³⁰ Preliminary Findings of Fact - Jurisdictional Issues at para. 24, Exhibit R to the Lachance Affidavit and “Search Engine Market Share”, Exhibit S-5 to the Lachance Affidavit; see also, *Equustek Solutions Inc. v. Jack*, 2014 BCSC 1063 at para. 32, aff’d 2017 SCC 34 (“*Equustek-BCSC*”).

³¹ Google, “Paid Search Advertising on Ads – Google Search Ads”, p. 2, Exhibit S-21 to the Lachance Affidavit.

³² “Form 10-Q” at p. 34, Exhibit S-25 to the Lachance Affidavit.

half of 2018).³³ Most of Google's advertising revenue is in turn generated from Google's search engine and other online services.³⁴ As Google notes, "[m]uch of our business is based on showing ads, both on Google services and on websites and mobile apps that partner with us."³⁵ Google's growth in revenue for the second quarter of 2018 was "primarily driven by increases in mobile search resulting from ongoing growth in user adoption and usage, as well as continued growth in advertiser activity".³⁶ Google also experienced "growth in desktop search due to improvements in ad formats and delivery."³⁷

30. Google advertising revenue from its search engine comes from displaying ads alongside search results. Currently, ads may appear at the top or bottom of search results, and are formatted to look like a search result except that they are marked "Ad".³⁸ Advertisers pay Google a fee each time a user clicks on an ad in Google search results or takes an action having seen an ad, such as downloading an app.³⁹

31. Ads displayed in search results are intended to be "relevant" or targeted to the user performing the search and, as such, may be influenced by the search terms used.⁴⁰ Ads may also be influenced by the personal information Google has obtained about the user making the search, including their past searches, their location, what websites and applications they have visited or used, previous ads they have clicked on, and demographic information about the user (age range, gender, topics of interest, etc.).⁴¹ This information allows Google to make its ads more targeted, and therefore more likely to be clicked on by a user, thus generating more revenue for Google.

32. Because Google also delivers ads on third-party websites, Google may earn revenue if a user navigates to a webpage listed in Google search results and then clicks on or views a Google-

³³ "Form 10-Q" at p. 34, Exhibit S-25 to the Lachance Affidavit.

³⁴ "Form 10-Q" at pp. 34-35, Exhibit S-25 to the Lachance Affidavit.

³⁵ Google, "How Google uses your data for ads", Exhibit S-17 to the Lachance Affidavit.

³⁶ "Form 10-Q" at p. 35, Exhibit S-25 to the Lachance Affidavit.

³⁷ "Form 10-Q" at p. 35, Exhibit S-25 to the Lachance Affidavit.

³⁸ Google, "Where your ads will appear on Google", Exhibit S-22 to the Lachance Affidavit.

³⁹ Preliminary Findings of Fact - Jurisdictional Issues at para. 52, Exhibit R to the Lachance Affidavit and "Paid Search Advertising on Ads – Google Search Ads", p. 1, Exhibit S-21 to the Lachance Affidavit.

⁴⁰ Google, "Why you're seeing an ad", p. 1, Exhibit S-18 to the Lachance Affidavit and Google, "Google Ads: How Google uses your data for ads", p. 2, Exhibit S-24 to the Lachance Affidavit.

⁴¹ Google, "Why you're seeing an ad" at p. 1, Exhibit S-18 to the Lachance Affidavit.

delivered ad displayed on that page.⁴²

33. Google promotes its advertising business by highlighting the popularity of its search engine. As its promotional materials note, “[w]ith millions of searches per day on Google, you can make sure your customers notice your brand, consider your offerings, and take action” if you advertise in Google search results.⁴³ Google also promotes to advertisers its ability to target ads to users of its search engine based on personal information it has about them.⁴⁴

II. POINTS IN ISSUE

34. By way of this reference, the OPC seeks the assistance of the Federal Court in resolving the preliminary jurisdiction issues. The Court’s answer to the reference questions will determine whether the OPC can proceed with its investigation of the underlying complaint and the other complaints that have been filed with it.

35. The issues in this reference can be summarized as follows:

- 1) Does Google collect, use and disclose personal information within the meaning of s. 4(1)(a) of PIPEDA when it indexes webpages and presents search results in response to searches of an individual’s name?
- 2) If so, does this collection, use and disclosure of personal information occur in the course of commercial activities within the meaning of s. 4(1)(a) of PIPEDA?
- 3) If Google’s search engine service does fall within s. 4(1)(a) of PIPEDA, is it nevertheless excluded from the application of the Act because its collection, use and disclosure of personal information is for journalistic, artistic or literary purposes and for no other purpose within the meaning of s. 4(2)(c) of PIPEDA?

⁴² Preliminary Findings of Fact - Jurisdictional Issues at para. 53, Exhibit R to the Lachance Affidavit.

⁴³ “Paid Search Advertising on Ads – Google Search Ads”, p. 2, Exhibit S-21 to the Lachance Affidavit [Emphasis added].

⁴⁴ Google, “About demographic targeting”, Exhibit S-19 to the Lachance Affidavit.

III. SUBMISSIONS

1) PIPEDA's provisions must be read in context and with its remedial goals in mind

36. The reference questions involve the interpretation of PIPEDA's scope. According to the modern approach to statutory interpretation, such questions must be answered by reading the provisions of a statute "in their entire context and in their grammatical and ordinary sense harmonious with the scheme of the Act, the object of the Act, and the intention of Parliament".⁴⁵

37. Similarly, the *Interpretation Act* requires that every statute "be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects."⁴⁶ Statutes are considered to be "always speaking" and are to be applied "to the circumstances as they arise, so that effect may be given to the enactment according to its true spirit, intent and meaning."⁴⁷ As Professor Sullivan notes, statutes "are written with an eye to the indefinite future, on the assumption that they will be applied not only to facts in existence at the time of they come into force but also to conditions and circumstances as they evolve from time to time."⁴⁸

38. When interpreting PIPEDA, regard must also be had to the Act's quasi-constitutional status. PIPEDA seeks to provide individuals with control over their personal information, and is thus closely connected to fundamental values of autonomy, dignity and privacy.⁴⁹ As a result, PIPEDA, and other similar statutes, have been recognized as being quasi-constitutional in nature.⁵⁰ As such, PIPEDA is to be given a broad, liberal and purposive interpretation that allows its objectives to be achieved as far as possible.⁵¹ Any ambiguity in its wording "must be interpreted in a way that best reflects the remedial goals of the statute."⁵² Further, any exceptions to the

⁴⁵ *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21, quoting E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87. See also, e.g., *Bell Canada v. Canada (Attorney General)*, 2019 SCC 66 at para. 41.

⁴⁶ *Interpretation Act*, RSC 1985, c I-21, s. 12.

⁴⁷ *Ibid.*, s. 10.

⁴⁸ R. Sullivan, *Sullivan on the Construction of Statutes* (6th ed., 2014), at p. 171.

⁴⁹ *Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401*, 2013 SCC 62 at para. 19 ("UFCW").

⁵⁰ *Bertucci v. Royal Bank of Canada*, 2016 FC 332 at para. 34 ("Bertucci"). See also *UFCW*, *ibid* at paras. 13, 19.

⁵¹ *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City)*; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City)*, 2000 SCC 27 at paras. 28-30. See also J. Hellis, *Quasi-constitutional Laws of Canada* (2018), p. 17.

⁵² *New Brunswick (Human Rights Commission) v. Potash Corporation of Saskatchewan Inc.*, 2008 SCC 45 at para. 19, per Abella J. ("Potash").

protections conferred by the statute are to be narrowly construed.⁵³

39. *Charter* values, such as freedom of expression, may be used as an interpretive aid, but only when there is a genuine ambiguity in the statute, in the sense that there are two or more plausible interpretations each equally in accordance with the intentions of the statute.⁵⁴ As set out below, a proper reading of the Act reveals no genuine ambiguity in this case. Moreover, using *Charter* values would be inappropriate in this case as it would short-circuit the section 1 analysis.⁵⁵ In particular, it has yet to be determined whether PIPEDA requires Google to de-list information and if so in what circumstances, an issue that will only be addressed if the OPC's investigation proceeds.

2) PIPEDA was enacted to protect privacy in the face of new online technologies

40. As the legislative debates around PIPEDA make plain, privacy concerns about “e-commerce” and the internet were a driving force behind the legislation. On the one hand, it was noted that e-commerce and the internet, which were relatively new at the time, had the potential to bring tremendous economic benefits to Canada.⁵⁶ On the other hand, this new online environment could allow for personal information to be circulated, used and sold with unprecedented ease by commercial organizations.⁵⁷ As the minister responsible for introducing PIPEDA stated, “Canadians know the threats to privacy are magnified in an electronic world”.⁵⁸

41. Similarly, the Government of Canada's consultation paper that preceded PIPEDA noted that “[t]he challenge of the electronic age is that with each transaction we leave a data trail that can be compiled to provide a detailed record of our personal history and preferences.”⁵⁹ In this

⁵³ *Potash, ibid.* at paras. 65-67, per McLachlin CJ concurring; *Hellis, supra* at p. 19.

⁵⁴ *Wilson v. British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 47 at para. 25.

⁵⁵ *R. v. Gomboc*, 2010 SCC 55, at para. 87 per Abella J, concurring.

⁵⁶ See e.g. *House of Commons Debates*, vol. 135, No. 137 (36-1), Oct. 19, 1998, at pp. 9074-9075 (Manley), 9083 (Riis), 9087, 9089 (Jones), 9112 (Myers) Exhibit D.2 to the Affidavit of Sandy Ballott, sworn August 10, 2020 (“Ballott Affidavit”) at pp. 41-42, 50, 54, 56, 61; INDY 36-1, No. 076, p. 1531 (Manley), Exhibit D. 5 to the Ballott Affidavit, p. 408.

⁵⁷ See e.g. *House of Commons Debates*, vol. 135, No. 137 (36-1), Oct. 19, 1998, at pp. 9075-9076 (Manley), 9080 (Lalonde), 9084 (Riis), 9128 (Vautour) Exhibit D.2 to the Ballott Affidavit at pp. 41-43, 47, 51, 77; *Debates of the Senate*, vol. 138, No. 17 (36-2) Dec. 7, 1999 at p. 391 (Kirby), Exhibit D.4 to the Ballott Affidavit at p. 393.

⁵⁸ INDY 36 -1 No. 076, p. 1545 (Hon. John Manley), Exhibit D.5 to the Ballott Affidavit at p. 410.

⁵⁹ Industry Canada and Justice Canada, “The Protection of Personal Information: Building Canada's Information Economy and Society” (Jan. 1998) (“PIPEDA Consultation Paper”), Exhibit D.1 to the Ballott Affidavit at p. 23.

new environment, personal information itself becomes a commodity, to be mined and used for profit.⁶⁰ The consultation paper also noted concerns about what could happen if information was made widely available for others to use:

As more information about us becomes available, it is used in a wider variety of situations to make decisions about issues such as the kinds of services we are entitled to, the jobs we are qualified for and the benefits we may be eligible for. It is extremely important to have mechanisms in place to give us control over our own personal information and enable us to ensure that it is both accurate and relevant.⁶¹

42. In addition to these concerns, there were concerns that Canada risked falling behind the EU, which had recently put in place its own framework for protecting personal information through its Data Protection Directive.⁶² Of particular concern was that the EU Data Protection Directive had the potential to block the flow of personal information to Canada if Canada did not put in place protections for personal information that were “adequate” in comparison to the EU framework.⁶³

43. PIPEDA was meant to address these concerns. What was needed were basic protections that would provide individuals with some control over their personal information, thereby promoting trust in the digital economy and online services.⁶⁴ This can be seen in PIPEDA’s long title, which reads in part “An Act to support and promote electronic commerce by protecting personal information that is collected, used or disclosed in certain circumstances”. It can also be seen in PIPEDA’s purpose clause, which recognizes we are “in an era in which technology

⁶⁰ PIPEDA Consultation Paper, Exhibit D.1 to the Ballot Affidavit at p. 25.

⁶¹ PIPEDA Consultation Paper, Exhibit D.1 to the Ballot Affidavit at p. 24.

⁶² *Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data*, OJ 1995, L 281, (“EU Data Protection Directive”).

⁶³ INDY 36 -1 No. 076, p. 1605 (Hon. John Manley), Exhibit D.5 to the Ballot Affidavit at p. 414-415, INDY 36-1, No. 091, p. 0930 (Bennett). See also PIPEDA Consultation Paper, Exhibit D.1 to the Ballot Affidavit at pp. 25-26. Shortly after PIPEDA was enacted, the European Commission declared that PIPEDA offered an adequate level of protection: EC, *Commission Decision of 20 December 2001 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data provided by the Canadian Personal Information Protection and Electronic Documents Act (2002/2/EC)*. The EU Data Protection Directive has since been replaced by *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 (General Data Protection Regulation)*, OJ 2016 L 119, p. 1 (“GDPR”). The GDPR continues to restrict transfers of personal data to countries outside of the EU that do not provide “adequate” protection: GDPR, Arts 44-45.

⁶⁴ PIPEDA Consultation Paper, Exhibit D.1 to the Ballot Affidavit at p. 23.

increasingly facilitates the circulation and exchange of information.”⁶⁵ Accordingly, PIPEDA’s purpose is to establish “rules to govern the collection, use and disclosure of personal information in a manner that recognizes the right of privacy of individuals with respect to their personal information and the need of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.”⁶⁶

44. As the Supreme Court of Canada has noted, PIPEDA and provincial statutes like it are “part of an international movement towards giving individuals better control over their personal information”.⁶⁷ This objective is increasingly important given that “new technologies give organizations an almost unlimited capacity to collect personal information, analyze it, use it and communicate it to others for their own purposes.”⁶⁸ Statutes like PIPEDA reflect, in the Court’s words, “an emerging recognition that the list of those who may access and use personal information has expanded dramatically and now includes many private sector actors”.⁶⁹

3) Parliament adopted a broad, flexible and technology neutral scheme to achieve PIPEDA’s remedial goals

45. To achieve its remedial goals, PIPEDA was drafted with a wide scope of application but with substantive obligations that were designed to be flexible and technology neutral. Paragraph 4(1)(a) provides that PIPEDA applies to “every organization in respect of personal information that...the organization collects, uses or discloses in the course of commercial activities.” [Emphasis added] The terms “organization”, “personal information”, and “commercial activity” are all defined by the Act in wide terms.⁷⁰ As a result, the legislation applies broadly to organizations in the private sector that handle personal information in the course of commercial activities, with exclusions from the Act narrowly drafted.⁷¹

46. Organizations that are subject to the Act are required to comply with the *Model Code for*

⁶⁵ PIPEDA, s. 3.

⁶⁶ PIPEDA, s. 3.

⁶⁷ *UFCW, supra* at para. 13.

⁶⁸ *UFCW, supra* at para. 20.

⁶⁹ *UFCW, supra* at para. 21.

⁷⁰ PIPEDA, s. 2(1), “organization”, “personal information”, “commercial activity”.

⁷¹ PIPEDA, ss. 4(2), 4.01, 26(2)(b).

the Protection of Personal Information (“**the Model Code**”), which is incorporated as Schedule 1 to the Act and sets out how organizations are to handle personal information.⁷²

47. The Model Code was first developed as a self-regulatory standard that pre-dated PIPEDA. It is organized around ten “fair information principles” that set out high-level obligations regarding how personal information should be handled, such as accountability, consent, accuracy, safeguards and individual access. These principles are in turn derived from the internationally recognized *OECD Guidelines for the Protection of Privacy and Transborder Flows of Personal Data*.⁷³

48. As noted by the Federal Court of Appeal, the Model Code and its incorporation into PIPEDA was “a compromise both as to substance and as to form.”⁷⁴ The Model Code was “[t]he subject of intense negotiation between business, consumer groups and government” and it “represents a compromise between the need to protect individual privacy and the desire of organizations to collect personal data for marketing and other commercial purposes”.⁷⁵ Because of its non-legal drafting, the Federal Court of Appeal has cautioned that the Model Code must be interpreted with “flexibility, common sense and pragmatism.”⁷⁶

49. By adopting broad definitions and the high-level principles found in the Model Code, PIPEDA was intended to be technology neutral and to apply to “all manner of information gathering ... including paper, telephone and the Internet”.⁷⁷ Because of the way the Model Code was drafted, the intention was that it “will not become outdated as technologies for the collection and storage of information change.”⁷⁸ In this way, PIPEDA would “[address] both present and future challenges” posed by the digital environment.⁷⁹

⁷² PIPEDA, s. 5(1) and Schedule 1.

⁷³ *Englander v. TELUS Communications Inc.* [2005] F.C.R. 572 at paras. 9, 43 (“*Englander*”); PIPEDA Consultation Paper, Exhibit D.1 to the Ballott Affidavit at p. 26.

⁷⁴ *Englander, ibid.* at para. 39;

⁷⁵ *Englander, supra*, at para. 40, quoting Michael Geist, *Internet Law in Canada*, 3rd ed., Concord, Ont.: Captus Press, 2002, at p. 303.

⁷⁶ *Englander, supra* at para. 46. See also *Wansink v. TELUS Communications Inc.*, 2007 FCA 21 at paras. 18-19 (“*Wansink*”); *Bertucci, supra*, at paras. 22, 36.

⁷⁷ INDY 36 -1 No. 076, p. 1545 (Manley), Exhibit D5 to the Ballot Affidavit at p. 410 [Emphasis added]. See also PIPEDA Consultation Paper, Exhibit D.1 to the Ballott Affidavit, at p. 28.

⁷⁸ PIPEDA Consultation Paper, Exhibit D.1 to the Ballott Affidavit, at p. 28.

⁷⁹ *House of Commons Debates*, vol. 135, No. 137 (36-1), Oct. 19, 1998 at p. 9076 (Manley), Ballott Affidavit at p. 43.

50. Compliance with PIPEDA’s obligations is overseen by the Privacy Commissioner, who is responsible for investigating complaints and issuing non-binding findings and recommendations.⁸⁰ At the conclusion of the Commissioner’s investigation, either a complainant or the Commissioner may bring the matter to Federal Court if a binding remedy is sought against an organization.⁸¹ This aspect of the scheme was meant to remedy the deficiency of the previous self-regulatory regime, where individuals had no right to an independent review of the personal information handling practices of private sector organizations. Overall, it was designed to be a regime that is “light, flexible and effective and that provides meaningful recourse for consumers”.⁸²

4) Google’s search engine collects, uses and discloses personal information

51. When considered together, the text, context and purpose of PIPEDA all indicate that Google’s search engine falls within the scope of s. 4(1)(a) of the Act. We will first deal with whether Google’s search engine collects, uses and discloses personal information. We will then turn to whether Google does so in the course of commercial activities.

a. Text – s. 4(1)(a)

52. There is no dispute that Google is an “organization”.⁸³ Google also, via its search engine, “collects”, “uses” and “discloses” personal information as required by s. 4(1)(a). To date, Google has not taken issue with this proposition.

53. Personal information is defined broadly as “information about an identifiable individual”.⁸⁴ Although collection, use and disclosure are not defined in the Act, their ordinary meaning is clear and, in the absence of any ambiguity or other contrary indications, is presumed to be binding.⁸⁵

54. The verb “collect” means, among other things to “bring or come together”, to “assemble”, to “accumulate”, to “systematically seek and acquire”, and to “obtain ... from a number of

⁸⁰ PIPEDA, ss. 11-13. See also PIPEDA, ss. 17.1-19.

⁸¹ PIPEDA, ss. 14-16.

⁸² *House of Commons Debates*, vol. 135, No. 137 (36-1), Oct. 19, 1998 at p. 9075 (Manley) Ballott Affidavit at p. 42. See also PIPEDA Consultation Paper, Exhibit D.1 to the Ballott Affidavit, at p. 27.

⁸³ PIPEDA, s. 2(1), “organization”. As a corporation it is a “person”: *Interpretation Act, supra*, s. 35(1), “person”.

⁸⁴ PIPEDA, s. 2(1), “personal information”.

⁸⁵ R. Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. (2014) at pp. 51-52.

people”.⁸⁶ To “use” means to “cause to act or serve for a purpose; bring into service; avail oneself of”.⁸⁷ To “disclose” is defined as to “make known, reveal.”⁸⁸ The definitions of the French versions of these terms reveal no substantive differences.

55. Google’s search engine engages in all of these activities. Google systematically seeks and acquires information, including personal information, by copying the content of publicly accessible webpages and storing in its index and cached copies of webpages. The information in Google’s index is stored on Google’s servers and is under its control. When an individual’s name is searched in Google’s search engine, Google uses this information in its index for a particular purpose, that of returning what Google considers to be relevant information in the form of search results. As is evidenced by the search results for the Complainant’s name,⁸⁹ these search results disclose or reveal personal information to others via their titles and the snippets of content, as well as the cached copies of webpages that Google maintains.

56. The fact that these activities are automated and carried out by computer programs under Google’s control does not alter their nature. There is nothing in the ordinary meaning of the terms collection, use and disclosure which suggests that they must be carried out manually.

57. The Court of Justice for the European Union (“**ECJ**”) reached the same conclusion in its decision in *Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González* (“**Google Spain**”). In that decision, the ECJ held that Google’s search engine engages in the “processing of personal data” within the meaning of the EU Data Protection Directive, which defined processing to include the “collection”, “use” or “disclosure” of personal data.⁹⁰ Specifically, the ECJ found that:

⁸⁶ *The Concise Oxford Dictionary of Current English* (9th edition), *sv.* “collect”. See also Order P2006-08, *Talisman Centre for Sport and Wellness* (Alta. OIPC) at paras. 34-38.

⁸⁷ *The Concise Oxford Dictionary of Current English* (9th edition), *sv.* “use”. The Supreme Court has accepted this definition as constituting the “plain meaning” of the word “use”, and has pointed out that the dictionary definition of the term use “denotes utilization for a purpose”: *Monsanto Canada Inc. v. Schmeiser*, 2004 SCC 34 at para. 31 per McLachlin CJ and Fish J, for the majority.

⁸⁸ *The Concise Oxford Dictionary of Current English* (9th edition), *sv.* “disclose”.

⁸⁹ Google search results for the Complainant’s name, Exhibit C to the Confidential Version of the Lachance Affidavit.

⁹⁰ Judgment of the Court (Grand Chamber) dated 13 May 2014, Case C-131/12 at paras. 4, 41 (“*Google Spain*”). The GDPR, which replaced the EU Data Protection Directive, continues to define “processing” in a similar fashion and to apply to Google’s search engine: GDPR, Art. 4(2). See also *Google LLC, successor in law to Google Inc. v*

... in exploring the internet automatically, constantly and systematically in search of the information which is published there, the operator of a search engine ‘collects’ such [personal] data which it subsequently ‘retrieves’, ‘records’ and ‘organises’ within the framework of its indexing programmes, ‘stores’ on its servers and, as the case may be, ‘discloses’ and ‘makes available’ to its users in the form of lists of search results.⁹¹

58. Similarly, this Court has also concluded that an organization that copies and republishes personal information from other websites falls within the ambit of s. 4(1)(a) of the Act. In *A.T. v. Globe24h.com* (“*Globe24h.com*”),⁹² an organization had copied Canadian court and tribunal decisions containing personal information from various websites and had republished them on its own website as part of its commercial activities. This Court concluded that this activity constituted the collection, use and disclosure of personal information.⁹³

b. Statutory context

59. Other provisions in the Act point in the same direction. Principle 4.1 of Schedule 1, the Accountability Principle, states that an organization “is responsible for personal information under its control”⁹⁴ and must ensure that this information is handled in a manner compliant with the other principles in Schedule 1. Principle 4.1 is thus a foundational principle, setting out the scope of an organization’s responsibility under PIPEDA.

60. In this case, the personal information in Google’s search engine index and in its search results are “under its control”. In particular, Google determines what webpages to crawl, how frequently it does so, how information it has collected from those webpages is arranged in its index and, via its algorithms, what information appears in search results and in what order.⁹⁵ If it so chooses, Google can alter the order in which a webpage or category of webpages appears in its search results. It may also decide to deindex or delist information so as to remove it from its search results in accordance with its Removal Policies and/or legal requirements.⁹⁶ According to Principle

Commission nationale de l’informatique et des libertés (CNIL), Judgment of the Court (Grand Chamber) dated 24 September 2019, Case C-507/17 at paras. 43-48.

⁹¹ *Google Spain, ibid.*, at para. 28.

⁹² 2017 FC 114 (“*Globe24h.com*”).

⁹³ *Globe24h.com, ibid.* at paras. 29-30, 65.

⁹⁴ PIPEDA, Sch. 1, Principle 4.1 [Emphasis added].

⁹⁵ Preliminary Findings of Fact - Jurisdictional Issues at paras. 29 and 33, Exhibit R to the Lachance Affidavit.

⁹⁶ Google, “Removal Policies”, Exhibit S-13 to the Lachance Affidavit.

4.1, Google is therefore “responsible” for the personal information in its search results.

61. Related to the concept of control in PIPEDA is that organizations determine the “purpose” for which personal information is collected. Among other things, an organization is required under Schedule 1 to identify its purposes and restrict how it collects, uses and discloses and retains personal information in relation to those purposes.⁹⁷ An organization’s purposes must also be ones that a reasonable person would consider are appropriate in the circumstances.⁹⁸

62. In Google’s case, it is clear that it determines the purposes for which it collects, uses and discloses information in its search engine. Google gathers, organizes and, by its search engine results, recommends content based on what it considers to be the most relevant to a user’s search terms based on a number of criteria it has set. In this regard, Google’s purposes are distinct from the webpages it indexes. As the ECJ noted in *Google Spain*, “the processing of personal data carried out in the context of the activity of a search engine can be distinguished from and is additional to that carried out by publishers of websites”.⁹⁹ Google’s search engine is “a service that presents advice to users as to what sites they might find relevant to their search needs”¹⁰⁰, a purpose which is clearly distinct and Google’s alone.

c. Purpose

63. PIPEDA’s purpose and remedial goals further support the Act’s application to Google’s search engine. Google’s search engine is the world’s dominant search engine, used to conduct millions of searches each day. It is therefore, without a doubt, a technology which “increasingly facilitates the circulation and exchange of information”, in the words of s. 3 of the Act. By collecting information from around the internet, collating it and displaying it in the form of search results linked to an individual’s name, Google’s search engine allows for the “unlimited dissemination of personal information through the Internet or other forms of technology” that

⁹⁷ See PIPEDA, Sch. 1, Principles 4.2, 4.3.2, 4.4, 4.5, 4.6.

⁹⁸ PIPEDA, s. 5(3).

⁹⁹ *Google Spain, supra*, at para. 35 [Emphasis added].

¹⁰⁰ A. Slane, “Search Engines and the Right to be Forgotten: Squaring the Remedy with Canadian Values on Personal Information Flow” (2018) 55 Osgoode Hall LJ 349 at p. 367 (“Slane”). Similarly, US case law refers to Google “speaking” or providing its “opinion” on what search results are relevant to a user’s search: see e.g. *Search King Inc. v. Google Technology Inc*, No. CIV-02-1457-M (W.D. Okla. January 13, 2003) at p. 9; *Langdon v. Google, Inc.* 474 F.Supp.2d 622 (2007) (D. Del. 2007) at 629-630.

PIPEDA and statutes like it were designed to regulate.¹⁰¹

64. Google's search engine renders personal information found on webpages readily accessible in a way that it would not otherwise be.¹⁰² Moreover, the search results that are displayed when an individual's name is searched provide a "structured overview of the information relating to that individual that can be found on the internet enabling [a user] to establish a more or less detailed profile of the data subject."¹⁰³

65. Professor Slane has noted that "[o]nline identity -- the profile that emerges when online information connected to a person's name or other identifier is aggregated and made available to others -- has increasingly become a central component of our social and professional lives."¹⁰⁴ The information that is collated and disclosed about an individual in search results can be used to make decisions about employment, accommodations, volunteer opportunities and personal relationships.

66. In *Globe24h.com*, this Court recognized that making personal information available in search engine results could, in some cases, result in the "needless exposure of sensitive personal information", even in cases where that personal information is available elsewhere online.¹⁰⁵ In that case, a foreign website operator had copied the online versions of Canadian court and tribunal decisions and republished them in a way that made them available in search engine results, contrary to the established practice of the Canadian websites from which they were copied and the recommendations of the Canadian Judicial Council. In finding that this practice was inappropriate, this Court acknowledged that search engines can play a role in magnifying harms that can occur to individuals when personal information is readily available in search engine results.¹⁰⁶ Google itself has acknowledged that by removing harmful content from its search results it can help mitigate the harm caused by the content, even if the content remains available online.¹⁰⁷

67. In defamation case law, at least one court in Canada has found that Google, given its role

¹⁰¹ *UFCW*, *supra* at para. 23.

¹⁰² *Google Spain*, *supra* at para. 36.

¹⁰³ *Google Spain*, *supra* at para. 37.

¹⁰⁴ Slane, *supra* at p. 355.

¹⁰⁵ *Globe24h.com*, *supra* at para. 76.

¹⁰⁶ *Ibid.*

¹⁰⁷ "Revenge Porn and Search" at p. 2, Exhibit S-11 to the Lachance Affidavit.

as a search engine, should not be liable in damages for reproducing defamatory material in its search results, at least prior to having been notified of the material.¹⁰⁸ However, the defamation context is entirely different and distinct from the privacy context. What is at issue here is not a question of liability for damages but rather the threshold question of whether Google’s search engine collects, uses and discloses personal information such that it falls within the scope of PIPEDA, a statute whose goals include balancing the rights of individuals and the needs of organizations and, as noted, giving “individuals better control over their personal information.”¹⁰⁹

68. A more relevant analogy to this case is the Supreme Court of Canada’s decision in *Google Inc. v. Equustek Solutions Inc.*¹¹⁰ In that case, the issue was whether an interlocutory injunction requiring Google to remove certain websites engaged in intellectual property violations from its search engine results should be upheld. Although Google was not responsible for the content of the websites, a majority of the Court noted that it facilitated access to them through its search engine.¹¹¹ This did not make Google “liable for this harm. It does, however, make Google the determinative player in allowing the harm to occur.”¹¹² The Court further noted that an interlocutory injunction requiring it to remove the websites from its search engine results did not “require Google to monitor content on the Internet, nor is it a finding of any sort of liability against Google for facilitating access to the impugned websites.”¹¹³ *Equustek* indicates that Google’s search engine’s role in making information more prominent and readily accessible can, in appropriate cases, make it subject to distinct legal obligations.

69. PIPEDA was intended to provide individuals with “some measure of control” over their personal information in the face of new online technologies like search engines that enable the creation of profiles of individuals. Some control does not mean absolute control. As is clear from s. 3 of the Act, the rights of individuals are to be recognized alongside the needs of organizations to collect, use and disclose personal information for appropriate purposes. However, given the

¹⁰⁸ *Niemala v. Malamas*, 2015 BCSC 1024. See also *Crookes v. Newton*, 2011 SCC 47, where the Supreme Court of Canada found that hyperlinking to defamatory content – without more – could not be considered a publication of the content for the purposes of triggering liability in defamation law.

¹⁰⁹ *UFCW*, *supra* at para. 13.

¹¹⁰ 2017 SCC 34.

¹¹¹ *Ibid.* at para. 26.

¹¹² *Ibid.* at para. 53.

¹¹³ *Ibid.* at para. 49.

nature of Google’s search engine technology and the effect that it can have on exposing personal information, finding that the protections afforded by PIPEDA apply to Google is entirely consistent with the legislative intent behind PIPEDA and its quasi-constitutional status.¹¹⁴ It is also consistent with the desire of Parliament to provide for independent recourse to individuals, first through a complaint mechanism to the Privacy Commissioner and ultimately to this Court.

5) Google’s search engine collects, uses and discloses personal information in the course of commercial activities

70. Google’s collection, use and disclosure of personal information also occurs in the course of commercial activities within the meaning of s. 4(1)(a). “Commercial activity” is defined broadly in s. 2 of the Act to mean “any particular transaction, act or conduct or any regular course of conduct that is of a commercial character, including the selling, bartering or leasing of donor, membership or other fundraising lists.” The Federal Court of Appeal has recently stated that the ordinary meaning of “commerce” includes “exchange, trade, buying and selling”.¹¹⁵

71. Google sells advertising space associated with its search results to advertisers, which generates billions of dollars in revenue for Google. Ads are displayed along with search results and Google is compensated each time a user clicks on an ad.¹¹⁶

72. The sale of advertising space clearly constitutes commercial activity within the meaning of s. 2 of the Act. Indeed, this Court has already found that the sale of ad space on a website is a commercial activity within the meaning of PIPEDA.¹¹⁷ Google has also previously accepted that its sale of online ad space is subject to PIPEDA. In one case, the OPC found that Google had contravened PIPEDA when it had allowed advertisers to target ads using its services on the basis of an individual’s sensitive health information.¹¹⁸ Google accepted the OPC’s recommendations under PIPEDA and put in place better measures with respect to how advertisers use its services.¹¹⁹

¹¹⁴ *Bertucci, supra* at para. 34. See also *UFCW, supra* at paras. 13, 19.

¹¹⁵ *3510395 Canada Inc. v. Canada (Attorney General)*, 2020 FCA 103 at para. 141.

¹¹⁶ “Form 10-Q” at p. 9, Exhibit S-25 to the Lachance Affidavit.

¹¹⁷ *Globe24h.com, supra* at para. 65.

¹¹⁸ *Use of sensitive health information for targeting of Google ads raises privacy concerns*, 2014 CanLII 3357 (PCC).

¹¹⁹ *Ibid.* at paras. 47-48.

73. In its initial response to the underlying complaint, Google appeared to argue that its search engine service and its ads should be viewed as two distinct activities.¹²⁰ However, Google's search engine service is what enables Google to display ads to its users and earn revenue. By displaying search results that are relevant to a user's query, Google attracts users who can then be shown ads. Google "employs its search engine and other user attracting services ... to create an audience for its advertisers."¹²¹ As Professor Slane notes, "[s]earch engine results are in this sense a product sold by the search engine company -- not directly to the user, but rather to advertisers and other data brokers with an interest in search result content and compilation."¹²² Further, the ads that are displayed are "contextual" and are influenced by the terms being searched, as well as the user's past searches and other personal information Google collects from its users, which makes the ads more targeted and more likely to be successful. Both Google's search engine and its ads depend on the other and are intertwined.

74. This conclusion has already been reached by the BC Supreme Court in *Equustek Solutions Inc. v. Jack*.¹²³ In that case, the BC Supreme Court found that it had jurisdiction over Google's search engine service for the purpose of issuing an injunction requiring the deindexing of websites from its search results in part because Google was carrying on a business in the province. Google had argued that its search engine service and its advertising business were "completely separate".¹²⁴ However, the Court rejected this assertion, finding that Google's search engine service and Google's sale of ads were inextricably linked.¹²⁵ In particular, the Court noted:

Google's business model is contextual advertising; the "context" is the search done using Google's search services. Ads are linked to either the subject matter of the search, or the history of the person searching. Google does not charge users of its search services. Rather, it sells space on its websites to advertisers whose ads are displayed alongside the search results generated by a user's query.

... I find that Google's search and advertising services are inextricably linked.¹²⁶

¹²⁰ Letter from David Fraser to OPC, dated March 2, 2018, Exhibit F to the Lachance Affidavit.

¹²¹ S.M. Powers & M. Jablonski, *The Real Cyber War: The Political Economy of Internet Freedom* (2015) at p. 95.

¹²² Slane, *supra* at p. 351.

¹²³ *Equustek* – BCSC, *supra*.

¹²⁴ *Equustek* – BCSC, *supra* at para. 53.

¹²⁵ *Equustek* – BCSC, *supra* at paras. 53 – 60.

¹²⁶ *Equustek* – BCSC, *supra* at paras. 54, 63.

75. This conclusion was affirmed unanimously by the British Columbia Court of Appeal and was not appealed by Google to the Supreme Court.¹²⁷ Abella J., for the majority in the latter court, noted that “Google earns money by selling advertising space on the webpages that display search results.”¹²⁸

76. A similar conclusion was also reached by the ECJ in *Google Spain*. As in *Equustek*, the ECJ concluded that Google’s advertising activities were closely related to, and enabled by, its search engine service and therefore the two activities could not be separated:

... the activities of the operator of the search engine and those of its establishment situated in the [EU] Member State concerned are inextricably linked since the activities relating to the advertising space constitute the means of rendering the search engine at issue economically profitable and that engine is, at the same time, the means enabling those activities to be performed.¹²⁹

77. The fact that ads may not be displayed in all search results – and are not displayed in the results for the Complainant in evidence – does not change the analysis. The definition of “commercial activity” captures not just a particular transaction but also “any regular course of conduct that is of commercial character”. Google’s search engine is not a series of different services that vary depending on what search terms are used. It is one service. Google attracts users by allowing them to find content on the internet no matter what search terms they use. If Google displays ads in some cases but not others, the fact remains that its business, as it admits, is based on displaying ads to users. It would be an absurd result to say that PIPEDA applies only to search results pages where an ad is displayed, but not to others. It is the activity as a whole that must be assessed. Moreover, even if a particular search results page does not contain ads, Google may still earn revenue if a user navigates to a webpage listed in search results that displays a Google ad.

78. Contrary to Google’s claim,¹³⁰ this Court’s decision in *State Farm Mutual Automobile Insurance Company v. Privacy Commissioner of Canada*¹³¹ does not support the assertion that Google’s activities are non-commercial. That case concerned whether PIPEDA applied to the

¹²⁷ 2015 BCCA 265 at paras. 52-55.

¹²⁸ *Equustek*, *supra* at para. 16.

¹²⁹ *Google Spain*, *supra* at paras. 56-57.

¹³⁰ Letter from David Fraser to OPC, dated March 2, 2018, Exhibit F to the Lachance Affidavit.

¹³¹ 2010 FC 736 (“*State Farm*”).

collection of evidence by an insurer acting on behalf of an individual defendant in a civil tort action. The Court noted that it was the “primary activity” that should be the focus of the analysis rather than incidental relationships.¹³² Because the primary activity at issue in that case— an individual defending themselves in a civil tort action – was not commercial, the insurer’s use of a third party to collect evidence on behalf of the individual defendant was also not commercial.

79. Clearly, the factual context in *State Farm* of an individual defendant in civil litigation is not comparable to an online advertising business like Google’s. In this case, the “primary activity” cannot be said to be anything other than Google’s search engine business, a business which offers users the ability to find content on the internet in exchange for displaying ads to them, ads which generate revenue for Google. Google is able to make its ads more targeted, and, therefore more valuable, by collecting the personal information of its users. To say that the “primary activity” is to facilitate access to information on behalf of individuals or to connect websites to individuals would be to turn a blind eye to the essentially commercial character of Google’s activities.

80. Further, Google is not hired by individuals or website operators nor does it act on behalf of them, as was the case of the insurer in *State Farm*. Google offers a service that users can use or not. Google remains in control of what it displays in search results. While Google voluntarily honours requests – in the form of embedded code – not to index webpages, website operators do not control when their webpages appear in search results or in what order.¹³³

81. More broadly, a finding that Google’s search engine service is not engaged in a commercial activity would be contrary to the purpose of PIPEDA and its objective of applying to all manner of online businesses. In this respect, the business model adopted by Google is not unique. Many online businesses such as social media sites do not charge for their service, but instead generate revenue by displaying targeted advertising to their users.¹³⁴ Services such as Facebook, for instance, are clearly subject to PIPEDA.¹³⁵ To suggest that these businesses are not engaged in

¹³² *State Farm, ibid.* at para. 106.

¹³³ Google, “How search algorithms work”, Exhibit S-9 to the Lachance Affidavit.

¹³⁴ Facebook, for instance, is also premised on this model: See e.g. *Douez v. Facebook, Inc.*, 2017 SCC 33, at paras. 5 and 8, per Karakatsanis J.

¹³⁵ See e.g. *Facebook didn’t get non-members’ consent to use email addresses to suggest friends, investigation finds*, 2012 CanLII 20964 (PCC); *Facebook authentication practices reasonable, investigation finds*, 2011 CanLII 93088 (PCC); *No evidence Facebook shares personal information with other sites via social plug-ins, investigation finds*, 2011 CanLII 93087 (PCC).

commercial activities because their services are free to use would defy common sense, would create a significant gap in PIPEDA's application, and would be inconsistent with Parliament's clear intent in crafting the law.

6) Google's search engine does not satisfy the journalistic purposes exemption

82. Google's search engine service is not exempt from PIPEDA on the basis of the "journalistic purposes" exemption found in s. 4(2)(c) of the Act. Google's purposes for collecting, using and disclosing personal information for its search engine service are not journalistic, and they are certainly not exclusively so. To interpret Google's search engine service as having an exclusively journalistic purpose would be to equate the concepts of journalism and communication in such a way that both terms lose their independent meaning.

83. Although the term "journalistic purposes" is not defined in the Act, it is reasonable to conclude that the term is intended to have a wide meaning. However, as the Alberta Court of Appeal found when interpreting an analogous provision under Alberta's *Personal Information Protection Act*, "it is unreasonable to think that the Legislature intended it to be so wide so as to encompass everything within the phrase 'freedom of opinion and expression'".¹³⁶ Indeed, "not every piece of information published on the internet qualifies" as journalism.¹³⁷

84. This exemption applies to any organization in respect of personal information that the organization collects, uses or discloses for journalistic, artistic or literary purposes and for no other purpose. It was included in PIPEDA in response to the concern that requiring journalists to seek consent to collect, use and disclose information in the course of their work would impede the ability of the press to operate freely.¹³⁸ The drafters determined that in light of the context in which journalists and the media operate within Canada, it would be more effective to allow for the publication of information "in the public interest", since individuals would still have recourse to traditional remedies under libel and slander law if there was "misuse, wrongful publication, or

¹³⁶ *United Food and Commercial Workers, Local 401 v Alberta (Attorney General)*, 2012 ABCA 130 at para. 56 ("UFCW-ABCA"), aff' 2013 SCC 62.

¹³⁷ UFCW-ABCA, *ibid.* at para. 59.

¹³⁸ INDY 36-1, No. 079, p. 1645 (Phillips), Exhibit D.5 to the Ballott Affidavit at p. 454.

publication of wrongful information.”¹³⁹ The requirement that the collection, use or disclosure of personal information be exclusively for journalistic purposes in order for the exemption to apply means that even media organizations whose activity may otherwise be exempt would be required to comply with PIPEDA if for example, it engaged in purely commercial activities such as operating a database or “running information retrieval services”.¹⁴⁰

85. In *Globe24h.com*, this Court had to determine whether the website that had copied online versions of Canadian court and tribunal decisions and republished them in a way that made them available in search engine results was exempt from PIPEDA on the basis that it was collecting, using and disclosing personal information exclusively for journalistic purposes. Noting that the exception had not received substantial treatment in the jurisprudence, this Court accepted the following three criteria identified by the Canadian Association of Journalists as a “reasonable framework for defining the exception”.¹⁴¹ Under this framework, an activity should qualify as journalism only where it meets the following criteria: (1) where its purpose is to inform the community on issues the community values, (2) it involves an element of original production, and (3) it involves a “self-conscious discipline calculated to provide an accurate and fair description of the facts, opinion and debate at play within a situation.”¹⁴²

86. Google’s search engine does not meet the definition of journalism accepted by the Federal Court in *Globe 24h.com*. First, in Google’s own words, the mission of its search engine is “to organize the world’s information and make it universally accessible”. Making all of “the world’s information” accessible via a Google search is undoubtedly broader than informing a particular community on issues the community values. Second, Google does not create information. Rather, it crawls the web for information, including personal information, indexes the information, and displays it in its search results, which means that the element of original production is missing. Third, information is included in search results on the basis that the links are responsive to the search terms entered by the user – there is no “self-conscious” discipline on the part of Google to ensure that the search results returned are an “accurate and fair description of the facts, opinion

¹³⁹ INDY 36-1, No. 079, p. 1555 (d’Auray), Exhibit D.5 to the Ballott Affidavit at p. 441.

¹⁴⁰ INDY 36-1, No. 079, p. 1700 (Flaherty), Exhibit D.5 to the Ballott Affidavit at p. 498.

¹⁴¹ *Globe 24h.com, supra* at para. 68 [Emphasis added].

¹⁴² *Ibid.*

and debate”. The criteria for including links in the search results page is whether the links are relevant to the search terms used, and not whether they represent an accurate and fair description of the facts, opinion and debate at issue in a given matter.¹⁴³

87. The conclusion that Google’s search engine does not collect, use and disclose personal information “solely” for journalistic purposes is consistent with the decision of the UK High Court in *NT1 & NT2 v Google LLC*.¹⁴⁴ In that case, the UK High Court concluded that an analogous provision under the UK’s *Data Protection Act* that exempts organizations who process personal data “only” for journalistic, artistic or literary purposes from complying with the Act did not apply to Google’s search engine.¹⁴⁵ When presented with the question of whether Google’s search engine service serves an exclusively journalistic purpose, the Court accepted Google’s argument that the concept of journalism is broad, but then held:

the concept it is not so elastic that it can be stretched to embrace every activity that has to do with conveying information or opinions [Emphasis added]. To label all such activity “journalism” would be to elide the concept of journalism with that of communication. The two are plainly not the same, and I do not consider that Google’s own activity can be equated with journalism.¹⁴⁶

88. In rejecting Google’s submission that the concept of journalism covered its search engine activities, the Court stated “The reality, as is clear from the evidence ... and common knowledge, is that the processes of obtaining, indexing, storing, and making available information that are engaged in by an ISE [internet search engine] are automated, and governed by computer based algorithms.” The “All” search is carried out indiscriminately, in the sense that the search criteria have no regard to the nature of the source publications.¹⁴⁷

89. The mere fact that media organizations may rely on Google’s search engine as a means to connect with the public when links to their news articles are returned in response to a Google

¹⁴³ See also: *Surrey Creep Catcher (Re)*, 2020 BCIPC 33 at para. 20 where the Adjudicator found that an analogous journalistic purposes exemption did not apply to an Organization that had not made any effort “to present the complainant’s points of view when posting the videos, to provide any commentary or analysis or to provide “an accurate and fair description of facts, opinion and debate at play within a situation.”

¹⁴⁴ *NT 1 and NT 2 v Google LLC*, [2018] 3 All ER 581, [2018] EWHC 799 (QB) (“*NT 1 and NT 2*”).

¹⁴⁵ *UK Data Protection Act 1998*, c.29, s. 32.

¹⁴⁶ *NT 1 and NT 2* at para. 98.

¹⁴⁷ *Ibid* at para. 100.

search does not make Google's purposes for collecting, using and disclosing information journalistic. This argument conflates Google's purposes with that of the underlying websites that it indexes and includes in search results. Google collects, uses and discloses personal information in the operation of its search engine service "for Google's own purposes which are of a separate and distinct nature"¹⁴⁸ from these underlying websites. Many different websites may use Google in part to reach their intended audiences, and users conduct Google searches for a wide variety of purposes, many of which have nothing to do with searching for journalistic content. Moreover, this reference is concerned with how Google's search engine operates and what its purposes for collecting, using and disclosing personal information are. How any third parties use Google's search engine is irrelevant to the questions at issue in this reference.¹⁴⁹

90. It is clear from the record that Google's purposes for operating its search engine service extend far beyond journalism. All types and forms of non-journalistic content are returned in search results, and as the UK High Court found in *NT 1 and NT 2*, "when Google responds to a search on an individual's name by facilitating access to journalistic content about that individual, this is purely accidental, and incidental to its larger purpose of providing automated access to third party content, whatever nature it may be, that it has identified and indexed and meets the search criteria specified by the user."¹⁵⁰ As the Court found in that case, the purpose of Google's search engine is commercial.¹⁵¹

7) Other issues, including freedom of expression, remain to be considered in the underlying investigation

91. It is important to note that answering the reference questions in the way that the Privacy Commissioner proposes does not resolve all of the issues in the underlying investigation. In particular, whether PIPEDA requires Google to delist the articles in question from searches of the Complainant's name and whether such a requirement would violate s. 2(b) of the *Charter* in a manner that could not be saved by section 1 are important issues that remain to be considered in

¹⁴⁸ *Ibid.*

¹⁴⁹ Order of Prothonotary Steele, dated July 24, 2020, Court File: T-1779-18 (motions to file additional evidence) at paras. 59-60.

¹⁵⁰ *NT 1 and NT 2*, *supra* at para. 100.

¹⁵¹ *Ibid.*

the underlying investigation and in any eventual proceedings before this Court.

IV. ORDER SOUGHT

92. The Privacy Commissioner respectfully requests that this Court answer the first reference question in the affirmative and the second reference question in the negative.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 8th DAY OF SEPTEMBER, 2020.

Peter Engelmann
Colleen Bauman
Regan Morris
Kelly Stephens

Legal Counsel for the Applicant, the Privacy
Commissioner of Canada

V – LIST OF AUTHORITIES

TAB	TITLE
A.	STATUTES AND REGULATIONS
1.	Interpretation Act, R.S.C., 1985, c I-21, ss. 10, 12, 35(1)
2.	Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5 , 2(1), 3, 4(1)(a), 4(2), 4.01, 5(1), 5(3), 11-16, 17.1-19, 26(2)(b), Schedule 1, Principles 4.1, 4.2, 4.3.2, 4.4, 4.5, 4.6
3.	UK Data Protection Act 1998, c.29 , s. 32(1)
4.	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 (General Data Protection Regulation) , OJ 2016 L 119, p. 1, arts. 4(2), 44-45
B.	CASE LAW
5.	<i>3510395 Canada Inc. v. Canada (Attorney General)</i> , 2020 FCA 103
6.	<i>A.T. v. Globe24h.com</i> , 2017 FC 114
7.	<i>Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401</i> , 2013 SCC 62
8.	<i>Bell Canada v. Canada (Attorney General)</i> , 2019 SCC 66
9.	<i>Bertucci v. Royal Bank of Canada</i> , 2016 FC 332
10.	<i>Crookes v. Newton</i> , 2011 SCC 47
11.	<i>Douez v. Facebook, Inc.</i> , 2017 SCC 33
12.	<i>Englander v. TELUS Communications Inc.</i> [2005] 2 F.C.R. 572
13.	<i>Equustek Solutions Inc. v. Google Inc.</i> , 2015 BCCA 265
14.	<i>Equustek Solutions Inc. v. Jack</i> , 2014 BCSC 1063
15.	<i>Facebook authentication practices reasonable, investigation finds</i> , 2011 CanLII 93088 (PCC)
16.	<i>Facebook didn't get non-members' consent to use email addresses to suggest friends, investigation finds</i> , 2012 CanLII 20964 (PCC)
17.	<i>Google Inc. v Agencia Espanola de Proteccion de Datos (AEPD), Mario Costeja Gonzales</i> , Judgment of the Court (Grand Chamber) dated 13 May 2014, Case C-131/12
18.	<i>Google Inc. v. Commission nationale de l'informatique et des libertes (CNIL)</i> , Judgment of the Court (Grand Chamber) dated 24 September 2019, Case C-507/17
19.	<i>Google Inc. v. Equustek Solutions Inc.</i> , 2017 SCC 34
20.	<i>Langdon v. Google, Inc.</i> , 474 F. Supp. 2d 622 (2007) (D. Del. 2007)

TAB	TITLE
21.	<i>Monsanto Canada Inc. v. Schmeiser</i> , 2004 SCC 34
22.	<i>New Brunswick (Human Rights Commission) v. Potash Corporation of Saskatchewan Inc.</i> 2008 SCC 45
23.	<i>Niemela v. Malamas</i> , 2015 BCSC 1024
24.	<i>No evidence Facebook shares personal information with other sites via social plugins, investigation finds</i> , 2011 CanLII 93087 (PCC)
25.	<i>NT 1 and NT 2 v Google LLC</i> , [2018] EWHC 799 (QB)
26.	Order of Prothonotary Steele, dated July 24, 2020, Court File T-1779-18
27.	Order of Prothonotary Tabib, dated November 2, 2018, Court File T-1779-18
28.	Order P2006-08 , <i>Talisman Centre for Sport and Wellness</i> (Alta. OIPC)
29.	<i>Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City); Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City)</i> , 2000 SCC 27
30.	<i>R. v. Gomboc</i> , 2010 SCC 55
31.	<i>Rizzo & Rizzo Shoes Ltd. (Re)</i> , [1998] 1 S.C.R. 27
32.	<i>Search King Inc. v. Google Technology Inc.</i> , No. CIV-02-1457-M (W.D. Okla. Jan. 13, 2003)
33.	<i>State Farm Mutual Automobile Insurance Company v. Privacy Commissioner of Canada</i> , 2010 FC 736 (CanLII)
34.	<i>Surrey Creep Catcher (Re)</i> , 2020 BCIPC 33
35.	<i>United Food and Commercial Workers, Local 401 v Alberta (Attorney General)</i> , 2012 ABCA 130
36.	<i>Use of sensitive health information for targeting of Google ads raises privacy concerns</i> , 2014 CanLII 3357 (PCC)
37.	<i>Wansink v. TELUS Communications Inc.</i> , 2007 FCA 21
38.	<i>Wilson v. British Columbia (Superintendent of Motor Vehicles)</i> 2015 SCC 47
C.	<u>SECONDARY SOURCES</u>
39.	A. Slane, “Search Engines and the Right to be Forgotten: Squaring the Remedy with Canadian Values on Personal Information Flow” (2018) 55 Osgoode Hall LJ 349
40.	<i>The Concise Oxford Dictionary of Current English</i> (9 th edition), sv. “collect”, “use”, “disclose”
41.	J. Helis, <i>Quasi-constitutional Laws of Canada</i> (2018)
42.	R. Sullivan, <i>Sullivan on the Construction of Statutes</i> , 6 th ed., (2014)
43.	S.M. Powers & M. Jablonski, <i>The Real Cyber War: The Political Economy of Internet Freedom</i> (2015)

TAB	TITLE
D.	<u>OTHER</u>
44.	<i>Commission Decision of 20 December 2001 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data provided by the Canadian Personal Information Protection and Electronic Documents Act (2002/2/EC).</i>
45.	<i>Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ 1995, L 281</i>