

Lawyers' Obligation under Privacy Act - Sas Ansari

Author : admin

Lawyers' Obligations Under Privacy Act

Daley v Canada (AG), [2016 FC 1154](#)

There were a number of issues in this Judicial Review application, including:

- Did the Ontario Privacy Commissioner breach rules of natural justice and its duty of fairness?
- Did the Ontario Privacy Commissioner err in concluding that the disclosure was unauthorized by the Privacy Act and the ITA?

```
medianet_width = "160"; medianet_height = "90"; medianet_crid = "749795932";  
medianet_versionId = "111299"; (function() { var isSSL = 'https:' == document.location.protocol;  
var mnSrc = (isSSL ? 'https:' : 'http:') + '//contextual.media.net/nmedianet.js?cid=8CUW8XQ2I' +  
(isSSL ? '&https=1' : ''); document.write(""); })();
```

FACTS

The Applicant was a partner of a law firm occasionally retained by the CRA for litigation. She was retained by the CRA to defend a CRA investigator against actions before regulatory and civil proceedings. She provided another lawyer with a transcript of an interview of that lawyer's client by her client conducted in the course of CRA investigations.

She found out, after the fact, that she has been found to have violated the Privacy Act in relation to her disclosure of the transcript after a complaint by the person who was the subject of the CRA investigation, civil and criminal actions, and against whom she was defending her client. She was not given notice of the complaint nor given an opportunity to make representations.

ANALYSIS

Was Disclosure Unauthorized

The [Privacy Act](#), section 8, does not give authority to the Commissioner to "administer, interpret or exercise the authority statutorily entrusted to another decision-maker in other 'Acts of Parliament'" (para 42). It must take into account the other decision-makers interpretations of the provision and court decisions in relation to it (para 42).

The ITA permits disclosure, under paragraph 241(3)(b), in proceedings relating to the administration or enforcement of the ITA. The SCC in *Slattery (Trustee of) v. Slattery*, [\[1993\] 3 S.C.R. 430](#), held that the phrase is very broad given the use of "in respect of" and "relating to" (para 43). The Court stated that " both connecting phrases suggested that a wide rather than

narrow view should be taken when considering whether a proposed disclosure is in respect of proceedings relating to the administration or enforcement of the ITA" (para 44). In this case (para 46):

Any legal proceedings calling into question the business dealings that were the subject of the criminal investigation are necessarily directly related to the administration and enforcement of the ITA.

Where, but for the CRA investigation or enforcement action, the proceedings would not have been brought, the necessary connection is made out (para 49).

OPC's Obligations toward Applicant

The Court agreed that the principles of natural justice may be ousted by express statutory language (para 32) (*Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, [2001 SCC 52](#), para 22; *Canada (Attorney General) v. Mavi*, [2011 SCC 30](#) at para 39).

NOTE - this is correct, subject to a Charter challenge of the said legislation.

The Court disagreed with the OPCs claim that the notification requirements are covered comprehensively by the *Privacy Act* (para 33). There is nothing in the *Privacy Act* that exempts the OPC from notifying or allowing third parties who may be affected by its decision to make representations (para 33). There is a common law duty to notify persons who may be significantly or directly affected by administrative decisions - *T.W.U. v Canadian Radio-Television & Telecommunications Commission*, [\[1995\] 2 SCR 781](#) at para 29; *Morneault v. Canada (Attorney General)*, [\[2001\] 1 FCR 30](#), at para 2 (para 34).

As legal counsel, not employee, of the CRA, the obligations towards the CRA are different than an employee (para 36):

it is her responsibility to advise her client about their legal obligations, not the contrary. Her interests in the context of a complaint under the Privacy Act are thus necessarily different than that of the CRA. A finding of a violation of the Privacy Act is of limited consequences for the institution, but has wider implications for a lawyer working in private practice

The potential damage to her reputation and the importance of her professional reputation gives rise to the minimum prejudice required to trigger the common law duty of notification (para 37). Limited reconsideration does not cure this failure (para 38).

Sas Ansari, BSc BEd PC JD LLM PhD (exp) CPA In-Depth Tax 1, 2 &3

[If you like this website, please share it with others.](#)

[Back To Top](#) OR [Home](#)

```
medianet_width = "160"; medianet_height = "90"; medianet_crid = "749795932";
medianet_versionId = "111299"; (function() { var isSSL = 'https:' == document.location.protocol;
var mnSrc = (isSSL ? 'https:' : 'http:') + '//contextual.media.net/nmedianet.js?cid=8CUW8XQ2I' +
(isSSL ? '&https=1' : ''); document.write(""); })();
```