

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**CORPORATION OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION  
AND CHRISTOPHER PARSONS**

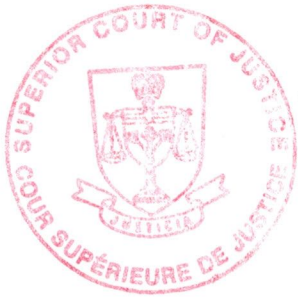
Applicants

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA  
AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA**

Respondent

**NOTICE OF APPLICATION**



**TO THE RESPONDENT**


**A LEGAL PROCEEDING HAS BEEN COMMENCED** by the applicants. The claim made by the applicants appears on the following pages.

**THIS APPLICATION** will come on for a hearing at Toronto, 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 an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

Date May 13, 2014 Issued by  Local registrar  
Address of court office 393 University Avenue, 107-11  
Toronto, ON. M5G 1E6

**TO: ATTORNEY GENERAL OF CANADA**

Department of Justice  
The Exchange Tower  
130 King Street West  
Suite 3400, Box 36  
Toronto, ON M5X 1K6

Tel: (416) 973-0942

Fax: (416) 973-0531

## APPLICATION

### 1. THE APPLICANTS MAKE APPLICATION FOR:

- a) A declaration that ss. 7(3)(c.1), 9(2.1), 9(2.2), 9(2.3) and 9(2.4) of the *Personal Information and Protection of Electronic Documents Act* (“*PIPEDA*”) (“the impugned provisions”), violate
  - i. the right to life, liberty and security of the person in a manner that is not in accordance with the principles of fundamental justice under s. 7 of the *Canadian Charter of Rights and Freedoms* (“*Charter*”); and
  - ii. the right to be free from unreasonable search and seizure under s. 8 of the *Charter*;and that these violations are not saved by s. 1 of the *Charter*;
- b) A declaration that the impugned provisions of *PIPEDA* are severed and of no force and effect;
- c) Its costs of this application; and
- d) Such further and other relief as counsel may advise and this Honourable Court may permit.

### 2. THE GROUNDS FOR THE APPLICATION ARE:

#### The Applicants

1. The Applicant Corporation of the Canadian Civil Liberties Association (“CCLA”) is a national organization that was constituted in 1964 to protect and promote respect for and observance of fundamental human rights and civil liberties. The CCLA has several thousand paid supporters, and a wide variety of persons, occupations, and interests are represented in its national membership.
2. The CCLA’s advocacy work aims to defend and ensure the protection and full exercise of human rights and civil liberties. The CCLA historically has taken principled positions to fight against abuse of authority and threats to fundamental rights and freedoms. The organization has

consistently sought to uphold the rights of Canadians to privacy and to be free from unreasonable intrusion by the state.

3. The CCLA has made vital contributions to jurisprudence on the intersection of privacy rights and policing, law enforcement and intelligence-gathering by the state, by intervening in cases before courts at many levels. The CCLA has also been granted standing to litigate issues in its own right. In addition, CCLA has made many presentations to government, legislative committees, boards and public inquiries on issues of law enforcement, national security and privacy rights.
4. The CCLA has a genuine interest in the issues raised in this Application as they are directly connected to the organization's mandate. CCLA has also developed substantial expertise in relation to the issues raised in this Application through its advocacy, public education and research.
5. The CCLA, in its operations as a non-profit corporation, maintains accounts with telecommunications service providers that are subject to and governed by *PIPEDA* in respect of safeguarding the informational privacy of its account holders. As such, the CCLA is directly affected by the legislation at issue in this Application.
6. The CCLA also seeks the relief requested herein as a public interest litigant;
7. This case raises serious *Charter* issues on which the CCLA has demonstrated its strong engagement and interest;
8. The CCLA brings this case as a systemic challenge to the impugned provisions, which would be difficult if not impossible for individual litigants to do;



9. This application is a reasonable and effective manner of bringing issues of public importance forward for adjudication;
10. The Applicant, Christopher Parsons (“Parsons”), is a Postdoctoral Fellow at the Citizen Lab in the Munk School of Global Affairs at the University of Toronto and Principal at Block G Privacy and Security Consulting. He brings this Application in his personal capacity and not as a representative of the Citizen Lab, as an employee at the University of Toronto, or as a representative of Block G. His research focuses on how privacy is affected by digitally mediated surveillance and the implications that such surveillance has in, and on, contemporary Western democracies. His research is also concerned with how governments procure personal information and how and when they share it. Parsons writes regularly in academic publications about issues related to privacy, particularly in relation to telecommunications services. He hosts a website wherein he blogs about these issues regularly and is also a commentator in the popular media on these issues.
11. In January 2014, Parsons, in conjunction with academic researchers and civil liberties organizations, asked a number of Canada’s leading telecommunications service providers to disclose how, why and how often they provide subscriber information to state agencies. In response, many of the telecommunications providers refused to provide detailed information, stated that they were largely prohibited from providing this information and suggested that the questions posed should be directed to the government. Parsons has been active in following the broad range of issues that arise as a result of private service providers serving as an information conduit for government institutions.
12. In addition, Parsons maintains accounts with telecommunications service providers that are subject to and governed by *PIPEDA* in respect of safeguarding the informational privacy of its account

holders. Parsons has also requested information from these service providers about whether his account has been subject to requests for information from any government agencies. As such, Parsons is directly affected by the legislation at issue in this Application.

### **PIPEDA**

13. *PIPEDA* is private sector privacy legislation; its provisions related to the protection of personal information have been in force in Canada since 2001. One of the core purposes of *PIPEDA* is the protection of personal information. It applies generally to organizations that collect, use or disclose personal information in the course of commercial activities and establishes rules for the collection, use and disclosure of that information.
14. *PIPEDA* recognizes that individuals have a right of privacy with respect to their personal information. Pursuant to s. 3, the Act seeks to balance this privacy interest with the needs of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.
15. Schedule 1 of *PIPEDA* contains the principles set out in the National Standard of Canada entitled *Model Code for the Protection of Personal Information*, CAN/CSA – Q830-96 (“National Standard”). This National Standard establishes general principles which are incorporated by reference into *PIPEDA*. A core principle included in the National Standard is the principle of consent, established as Principle 3 in s. 4.3 of Schedule 1. This Principle states that the knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where obtaining knowledge and consent would be inappropriate.

16. Despite the breadth of the principle set out in s. 4.3 of Schedule 1, *PIPEDA* does set out rules that provide for the disclosure of personal information without the knowledge or consent of the individual in a variety of circumstances.
17. Section 7(3)(c.1) of *PIPEDA* creates a direct link between the private sector and government actors by allowing for the disclosure of information to a large group of government institutions in a broad range of circumstances. In particular, this section allows an organization to disclose personal information without the knowledge or consent of the individual where the disclosure is
- ...made to a government institution or part of a government institution that has made a request for the information, identified its lawful authority to obtain the information and indicated that
- (i) It suspects that the information relates to national security, the defence of Canada or the conduct of international affairs,
  - (ii) The disclosure is requested for the purpose of enforcing any law of Canada, a province or a foreign jurisdiction, carrying out an investigation relating to the enforcement of any such law or gathering intelligence for the purpose of enforcing any such law, or
  - (iii) The disclosure is requested for the purpose of administering any law of Canada or a province.
18. Individuals may ask organizations whether their personal information has been disclosed to a government institution or part of a government institution under s. 7(3)(c.1) and for information related to requests and disclosure. Pursuant to s. 9(2.2) – (2.4) of *PIPEDA*, the organization must inform the relevant government institution of the request and must refuse the request if the government institution objects on certain grounds. As a result, there are circumstances under which an individual would have no means of determining whether their personal information has been requested and/or obtained by a government institution.

### **Mass Disclosure of Personal Information**

19. Government agencies including the Canadian Border Services Agency, the Royal Canadian Mounted Police, the Canadian Security Intelligence Service, the Communications Security



Establishment Canada and provincial and municipal law enforcement authorities seek disclosure of personal information from Canadian telecommunications companies on a massive scale. A significant majority of these disclosures are made without prior judicial authorization and are rooted in s. 7(3)(c.1) of *PIPEDA*.

20. In general, telecommunications providers do not disclose the frequency of requests for personal information and will not advise affected individuals that their information has been the subject of a request or disclosure. Some providers take the position that they are prohibited from disclosing this information, even at an aggregate level, or that the law is unclear on the scope of permissible disclosure.
21. A number of federal government agencies have disclosed the frequency of requests made to telecommunications providers. CSIS has refused to disclose this information for reasons of national security and to protect their ability to collect intelligence and advise the government. CSEC has refused for similar reasons. The RCMP was unable to provide information on the number of requests it makes because it does not maintain a central data repository.
22. The information that is collected by government institutions pursuant to s. 7(3)(c.1) of *PIPEDA* is collected and used in connection with initiating criminal proceedings against individuals and the laying of criminal charges. In addition to use for criminal charges and proceedings, this information can also be used for national security purposes, and is collected by intelligence agencies and shared with other domestic agencies. Further, domestic agencies may and do share information with foreign agencies in connection with matters of national security, international affairs or for purposes of enforcing a law of a foreign jurisdiction.

### **Charter Breaches**



23. The scheme established by s. 7(3)(c.1) of *PIPEDA* allows government agencies access to personal information in the custody of private corporations on a massive scale. Personal information may be obtained without the knowledge or consent of the concerned individual and, pursuant to ss. 9(2.1)-(2.4), in many cases the individual will not be advised that disclosure was made nor have any right to such disclosure. Where the requesting government agency has shared information with a foreign jurisdiction, Canada effectively loses control over the information, its use, dissemination and further disclosure, increasing the risk of serious and adverse consequences to Canadians.
24. The impugned provisions violate the right to liberty and security of the person safeguarded under s. 7 of the *Charter*, and do so in a manner that is not in accordance with the principles of fundamental justice. The scope of permissible disclosure of personal information included in s. 7(3)(c.1) is arbitrary, overbroad and grossly disproportionate. The barriers to obtaining information about whether disclosure has been made further the violation. These violations cannot be saved by s. 1 of the *Charter*.
25. Section 7(3)(c.1) also violates the right to be free from unreasonable search and seizure by allowing government access to personal information in a wide range of circumstances absent prior judicial authorization and where individuals hold a reasonable expectation of privacy.
26. The violations of ss. 7 and 8 do not constitute reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

### **Statutory Provisions**

27. *Canadian Charter of Rights and Freedoms*, ss. 1, 7 and 8;
28. *Constitution Act, 1982*, s. 52;

29. *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, ss. 3, 7(3)(c.1), 9(2.1), (2.2), (2.3) and (2.4), and Schedule 1;
30. *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, Rule 14; and
31. Such further and other grounds as counsel may advise and this Honourable Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Application:

- a) The affidavit of Sukanya Pillay, to be sworn, and the exhibits attached thereto;
- b) The affidavit of Christopher Parsons, to be sworn, and the exhibits attached thereto;
- c) The affidavit of David Murakami Wood, to be sworn, and the exhibits attached thereto; and
- d) Such further and other evidence as counsel may advise and this Honourable Court may accept.

Date: May 13, 2014

**Paliare Roland Rosenberg Rothstein LLP**  
155 Wellington Street West  
35<sup>th</sup> Floor  
Toronto, ON M5V 3H1

**Andrew Lokan** (LSUC #31629Q)  
Tel.: 416.646.4324  
Fax: 416.646.4301  
email: andrew.lokan@paliareroland.com

**Lawyers for the Applicants**

Court File No. *CV-14-504139*

**CORPORATION OF THE CANADIAN CIVIL LIBERTIES  
ASSOCIATION and CHRISTOPHER PARSONS**  
Plaintiffs (Respondents)

-and- **HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as  
represented by THE ATTORNEY GENERAL OF CANADA**  
Defendants (Appellant, State Farm)

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Toronto, ON M5V 3H1

**Andrew Lokan** (LSUC #31629Q)  
Tel.: 416.646.4324  
Fax: 416.646.4301  
email: andrew.lokan@paliareroland.com

**Lawyers for the Applicants**