FEDERAL COURT REVIEW

Under section 41 of the Federal *Access to Information Act*

ACCESSPRIVACY BY OSLER

WHO CAN APPLY FOR COURT REVIEW?

1) A complainant who received copy of the Information Commissioner's (IC's) final report made under s. 37(2) (FR) may seek court review of any matter that is the subject of the complaint. [s. 41(1)]

2) The head of a government institution (head) who received copy of the FR may only seek review of an order, not a recommendation. [s. 41(2)]

3) A 3P who made written representations to the IC and received copy of the FR may seek court review of either an order or recommendation to disclose confidential commercial information but only if the complainant and/or the head have not done so. [s.41(3)]

4) The Privacy Commissioner (PC) who made written representations to the IC and received copy of the FR, may seek court review of an order or recommendation to disclose personal information but only if the complainant and/or the head have not done so. [s. 41(4)]

WHEN?

The timeline for bringing an application for court review starts when the head receives the FR. [s. 41]

The FR is deemed to have been received by the head 5 business days after the date of FR was issued. [s. 37(5)]

Timelines vary for different parties to seek court review:

1) The complainant has 30 business days from the day the FR is received. [s. 41(1)]

2) A head has 30 business days from the date the FR is received. [s. 41(2)]

3) A 3p has 10 business days following the expiry of the 30-business day period given to the complainant and/or head. [s. 41(3)]

4) The PC has 10 business days following the expiry of the 30-business day period given to the complainant and/or head. [s. 41(4)]

NOTICE

If the complainant, 3P or PC makes an application for court review, they must name the head as respondent and immediately serve copy of the originating document on the head. [s. 43(1)]

The head must provide notice to the IC and any other party who received copy of the FR [s. 43(2)]

If the head makes an application for court review, s/he must name the IC as respondent [s. 41(5)] and immediately serve copy on the IC and any other person who received copy of the FR (complainant, 3P and/ or PC). [s. 43(2)]

WHO MAY APPEAR AS A PARTY TO THE PROCEEDINGS?

Anyone who received copy of the FR may appear as a party to a court review brought under s. 41.

The IC may appear on behalf of a complainant or as a party to any application for review brought under s. 41. [s. 42]

HEARING

The hearing is a new (*de novo*) proceeding. [s. 44.1]

The application for court review shall be heard and determined in a summary way in accordance with the Federal Courts Rules. [s. 45]

The Court may examine any record to which the ATIA applies including those covered by solicitor-client privilege. [s. 46]

The Court must take every reasonable precaution to avoid disclosure of the records at issue during the proceedings. [s. 47]

Hearings relating to international affairs or defence are subject to special rules. [s. 52]

BURDEN OF PROOF

In court reviews brought by the complainant or the government institution, the burden of proving that the head is authorized to withhold the records is on the government institution. [s. 48(1)]

In court reviews brought by a 3P or the PC, the burden of proving that the head is not authorized to disclose the information is on the 3P or the PC. [s. 48(2)]

STAY OF ORDER

If an application for court review is brought, the IC's order is stayed until the proceedings are finally concluded. [s. 41.1 (1)]

If all the persons in receipt of the FR agree in writing, any part of an order that is not the subject of review becomes operative. [s. 41.1(2)]

DECISION

ON ISSUES OF ACCESS

If court determines that head is **NOT** authorized, or did not have reasonable grounds, to refuse disclosure, court shall order disclosure. [ss. 49 and 50]

If court determines that head **IS** authorized, or has reasonable grounds, to refuse disclosure, court shall make an order declaring that the head is not required to comply with the IC's Order. [s. 50.1]

OTHER ISSUES (e.g. fees or time limits)

If court determines that head is **NOT** authorized to make the decision or take the action under challenge, court shall order head to comply with the provisions of the IC's order that relate to that matter. [s. 50.2(a)]

If court determines that head **IS** authorized to make the decision or take the action under challenge, court shall make an order declaring that head is not required to comply with the IC's order in relation to that matter. [s. 50.2(b)]

COSTS

Court has discretion to award costs, but where the Court is of the opinion that the application raises an important new principle, it shall order costs in favour of the applicant regardless of outcome. [s. 53]