

Federal Court



Cour fédérale

Date: 20190723

Docket: T-1903-17

Citation: 2019 FC 968

Ottawa, Ontario, July 23, 2019

PRESENT: Mr. Justice James W. O'Reilly

BETWEEN:

MARY KWAN

Applicant

and

AMEX BANK OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms Mary Kwan filed a complaint against Amex to the Office of the Privacy Commissioner (OPC). She alleged that Amex unlawfully obtained her personal information for purposes beyond those relating to her application for a credit card, that Amex failed to keep an accurate record of that information, and that Amex fabricated transcripts of her phone conversations with company representatives.

[2] In 2016, the OPC discontinued its investigation of Ms Kwan's complaint after concluding that Amex was legally required to obtain Ms Kwan's personal information, that the steps Amex took to verify Ms Kwan's identity were necessary, and that the transcripts were substantially accurate.

[3] In this application, Ms Kwan seeks damages against Amex in the amount of \$250,000.00 for violations of her privacy rights (under the *Personal Information Protection and Electronic Documents Act* SC 2000, c 5, ss 14(1) and 16(c). See Annex for all enactments cited).

[4] I can find no basis on which to grant Ms Kwan the relief she seeks. Amex lawfully collected Ms Kwan's personal information for a valid purpose and kept reasonably accurate records. She is not entitled to damages. I must, therefore, dismiss this application.

[5] There are four issues:

- 1 Did Amex collect Ms Kwan's personal information for a purpose extraneous to her credit card application?
- 2 Did Amex collect Ms Kwan's personal information unlawfully?
- 3 Did Amex keep accurate records?
- 4 Is Ms Kwan entitled to damages?

[6] Ms Kwan also raised a number of issues on this application that were not part of her complaint to the OPC. I have not considered those issues as they are not properly before me.

II. Background

[7] In 2015, Ms Kwan phoned Amex to apply for a credit card. She was read a privacy agreement to which she verbally agreed. Amex then took steps to verify Ms Kwan's identity but was unable to do so from public sources. Amex tried again by using the TransUnion security quiz, but Ms Kwan was unable to answer the questions successfully. Ms Kwan tried to confirm her identity at a Canada Post office, but failed. Finally, Ms Kwan proved her identity by attending an Amex office. Days later, she received her card.

[8] Over the next several months, Ms Kwan made a number of privacy access requests to Amex. Amex complied and provided transcripts of the phone conversations between Ms Kwan and Amex representatives. Ms Kwan claimed that the transcripts were fake and demanded damages for humiliation and violation of her privacy rights. Amex declined.

[9] Ms Kwan then complained to the OPC. The OPC opened an investigation but discontinued it for a lack of foundation.

A. *Issue One – Did Amex collect Ms Kwan's personal information for a purpose extraneous to her credit card application?*

[10] Ms Kwan makes a number of allegations against Amex. First, she maintains that Amex is not bound by money laundering laws and does not have to report to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). Accordingly, she contends, Amex is not required to adhere to the identity verification rules that govern other kinds of financial

institutions. Second, Ms Kwan claims that she was contacted by a person working at a call centre in India who tried to obtain information not needed to process her application. Third, Ms Kwan states that she did not expressly consent to Amex to collecting, using, and disclosing her personal information.

[11] Ms Kwan has not made out these allegations. After checking with FINTRAC directly, the OPC found that Amex was bound by FINTRAC requirements. Further, it is clear that Amex is also subject to money laundering laws and regulations, which require identity verification (*Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17, ss 5(a), 6.1; *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184, s 54.1).

[12] In addition, while Ms Kwan contends that the transcripts of her phone conversations, as well as the underlying audio tapes, were altered by Amex, there is no reliable evidence to support that allegation. The evidence also shows that the information was collected with Ms Kwan's knowledge and consent for purposes of verifying her identity and to comply with legal requirements.

[13] Therefore, I cannot conclude that Amex acquired Ms Kwan's personal information for a purpose extraneous to her credit card application.

B. *Issue Two – Did Amex collect Ms Kwan’s personal information unlawfully?*

[14] Ms Kwan asserts that Amex resorted to improper tactics to obtain personal information from her that it did not need.

[15] This allegation is not supported.

[16] As already mentioned, Amex was legally bound to verify Ms Kwan’s identity. It finally did so after a number of unsuccessful attempts. There is no basis for Ms Kwan’s contention that Amex had embarked on a fishing expedition.

C. *Issue Three – Did Amex keep accurate records?*

[17] Ms Kwan accuses Amex of falsifying audio tapes and transcripts.

[18] There is no basis for this claim. Ms Kwan provided no evidence to the OPC to support this allegation, and she has presented none to me.

D. *Issue Four – Is Ms Kwan entitled to damages?*

[19] Given that Ms Kwan has failed to establish that her complaint about Amex was meritorious, it follows that she is not entitled to damages.

III. Conclusion and Disposition

[20] Ms Kwan has failed to show that Amex unlawfully or improperly collected her personal information, or that Amex failed to keep accurate records. I must, therefore, dismiss this application, with costs.

JUDGMENT IN T-1903-17

THIS COURT'S JUDGMENT is that the application is dismissed, with costs.

"James W. O'Reilly"

Judge

ANNEX

Personal Information Protection and Electronic Documents Act, SC 2000, c 5***Loi sur la protection des renseignements personnels et les documents électroniques, LC 2000, ch 5***

Hearing by Court

Audience de la Cour

Application

Demande

14(1) A complainant may, after receiving the Commissioner's report or being notified under subsection 12.2(3) that the investigation of the complaint has been discontinued, apply to the Court for a hearing in respect of any matter in respect of which the complaint was made, or that is referred to in the Commissioner's report, and that is referred to in clause 4.1.3, 4.2, 4.3.3, 4.4, 4.6, 4.7 or 4.8 of Schedule 1, in clause 4.3, 4.5 or 4.9 of that Schedule as modified or clarified by Division 1 or 1.1, in subsection 5(3) or 8(6) or (7), in section 10 or in Division 1.1.

14 (1) Après avoir reçu le rapport du commissaire ou l'avis l'informant de la fin de l'examen de la plainte au titre du paragraphe 12.2(3), le plaignant peut demander que la Cour entende toute question qui a fait l'objet de la plainte — ou qui est mentionnée dans le rapport — et qui est visée aux articles 4.1.3, 4.2, 4.3.3, 4.4, 4.6, 4.7 ou 4.8 de l'annexe 1, aux articles 4.3, 4.5 ou 4.9 de cette annexe tels qu'ils sont modifiés ou clarifiés par les sections 1 ou 1.1, aux paragraphes 5(3) ou 8(6) ou (7), à l'article 10 ou à la section 1.1.

Remedies

Réparations

16 The Court may, in addition to any other remedies it may give,

16 La Cour peut, en sus de toute autre réparation qu'elle accorde :

...

[...]

(c) award damages to the complainant, including damages for any humiliation that the complainant has suffered.

c) accorder au plaignant des dommages-intérêts, notamment en réparation de l'humiliation subie.

Proceeds of Crime (Money Laundering) and Terrorist Financing Act, SC 2000, c 17***Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes, LC 2000, ch 17***

Record Keeping, Verifying Identity, Reporting of Suspicious Transactions and Registration

Tenue de documents, vérification d'identités, déclaration des opérations douteuses et inscription

Application of Part

5 This Part applies to the following persons and entities:

- (a) authorized foreign banks within the meaning of section 2 of the *Bank Act* in respect of their business in Canada, or banks to which that Act applies;

Record Keeping and Verifying Identity

Verifying Identity

6.1 Every person or entity referred to in section 5 shall verify the identity of a person or entity in accordance with the regulations.

Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations, SOR/2002-184

Financial Entities

54.1 Subject to subsections 62(1) and (2) and section 63, every financial entity shall

- (a) if the financial entity opens a credit card account in the name of a person, ascertain their identity in accordance with subsection 64(1);

- (b) where the financial entity opens a credit card account in the name of a corporation, confirm the existence of and ascertain the name and address of the corporation and the names of its

Champ d'application

5 La présente partie s'applique aux personnes et entités suivantes :

- a) les banques régies par la *Loi sur les banques* et les banques étrangères autorisées, au sens de l'article 2 de la *Loi sur les banques*, dans le cadre des activités que ces dernières exercent au Canada;

Tenue et conservation de documents et vérification d'identités

Vérification d'identité

6.1 La personne ou entité visée à l'article 5 est tenue de vérifier l'identité d'une personne ou entité conformément aux règlements.

Règlement sur le recyclage des produits de la criminalité et le financement des activités terroristes, DORS/2002-184

Entités financières

54.1 Sous réserve des paragraphes 62(1) et (2) et de l'article 63, toute entité financière doit prendre les mesures suivantes :

- a) lorsqu'elle ouvre un compte de carte de crédit au nom d'une personne, vérifier l'identité de celle-ci conformément au paragraphe 64(1);

- b) lorsqu'elle ouvre un compte de carte de crédit au nom d'une personne morale, vérifier l'existence de celle-ci, ses dénomination sociale et adresse et les noms de ses administrateurs

directors in accordance with section 65; and

(c) where the financial entity opens a credit card account in the name of an entity other than a corporation, confirm the existence of the entity in accordance with section 66.

conformément à l'article 65;

c) lorsqu'elle ouvre un compte de carte de crédit au nom d'une entité autre qu'une personne morale, vérifier l'existence de celle-ci conformément à l'article 66.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1903-17

STYLE OF CAUSE: MARY KWAN v AMEX BANK OF CANADA

**HEARING IN WRITING BY CONSENT OF THE PARTIES, AS PER THIS COURT'S
DIRECTION DATED MARCH 25, 2019, CONSIDERED AT OTTAWA ONTARIO**

JUDGMENT AND REASONS: O'REILLY J.

DATED: JULY 23, 2019

WRITTEN REPRESENTATIONS BY:

Mary Kwan FOR THE APPLICANT – SELF-REPRESENTED

W. David Rankin FOR THE RESPONDENT

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