Federal Court  Cour fédérale

Date: 20110412

Docket: T-518-10

Citation: 2011 FC 452

Vancouver, British Columbia, April 12, 2011

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

EVE KOLLAR

Applicant

and

ROGERS COMMUNICATIONS INC.

Respondent

REASONS FOR ORDER AND ORDER

[1] Ms. Kollar was employed by Rogers for just over a year. She was then let go, not for cause, but as part of a corporate reorganization. She agreed to a severance package. Her severance is not before the Court.

[2] What is before the Court is her subsequent endeavour to obtain her personal information from Rogers, as she was entitled to do under the *Personal Information Protection and Electronic Documents Act* (PIPEDA). She complained to the Office of the Privacy Commissioner that Rogers

did not provide her with all the information it had on file in a timely manner. By the end of the Privacy Commissioner's investigation, Rogers had provided further documentation and stated that other documentation Ms. Kollar sought could not be found. The Commissioner held the complaint was well-founded in that the information was not provided within time, but that the matter was resolved. Rogers was strongly recommended to ensure that employees dealing with such privacy-related requests are aware of the procedures in place and understand the importance of responding to requests in a timely manner and with due diligence. Rogers appears to have taken that recommendation to heart as evidenced by subsequent Human Resources bulletins.

[3] Not satisfied with the decision, Ms. Kollar has applied to this Court for a hearing as permitted by section 14 of PIPEDA. It is well established that such an application is not by way of judicial review but rather is *de novo*, so that further evidence is permitted (*Englander v Telus Communications Inc*, 2004 FCA 387, [2005] 2 FCR 572 (FCA) at para 48).

[4] Thus, I am not bound to uphold the decision even if I consider it reasonable based on the material before the Commission.

[5] To quote the application, Ms. Kollar seeks:

i. Fairness and justice in the decision-making process;
ii. Declaring that the complaint is well-founded;
iii. Directing the Respondent to correct its practices;
iv. Directing the Respondent to publish a notice in its Employee's Newsletter;
v. Damages to the Applicant;
vi. Applicant's costs be paid by the Respondent; and
vii. Such further action as this Honorable Court deems appropriate for not complying with applicable laws.

[6] Faced with this application, Rogers went on the offensive and asks the Court to hold that it had in fact responded to Ms. Kollar's request in a timely manner.

I. Background

[7] By letter Ms. Kollar requested personal information from Rogers which she broke down into seven categories, including "personnel file(s)" and "any and all other information". Rogers replied within 30 days and provided her with the documents in her personnel file which had been maintained in hard copy form.

[8] Ms. Kollar responded by identifying 19 documents or categories of documents she considered were missing. Rogers acknowledged her letter and stated it would look into the matter. More than a month went by without further word, so Ms. Kollar complained to the Privacy Commissioner's Office.

[9] It took Rogers more than a year to definitively provide further documentation and to declare that it no longer had other documentation sought. Rogers would like to take the position that it had in fact responded in May 2009, which response included a letter of apology for not responding earlier, but Ms. Kollar denies receiving that documentation, and Rogers was unable to establish that the letter of apology ever went beyond a draft form, and that any documentation had been sent at that time. Documentation was sent in December 2009.

[10] In its decision of February 16, 2010, the Office of the Privacy Commissioner was satisfied that by then Ms. Kollar had been provided with access to all her personal information held by

Rogers. It concluded that the complaint was well-founded but resolved, based on subsections 8(3) and 8(5) of the Act and Principle 4.9 of the Schedule I thereto. Principle 4.9 requires an individual upon request to be informed of the existence, use and disclosure of her personal information and to be given access thereto. Subsection 8(3) requires an organization to respond with due diligence and in any case within 30 days. Subsection 8(5) states that failure to respond within the time limit is a deemed refusal to provide access.

[11] Subsection 8(4) allowed that Rogers could extend the time limit for a maximum of 30 days if meeting the time limit would unreasonably interfere with its activities or if time was required to undertake consultations to respond to the request. The time limit could be extended beyond that if necessary to convert personal information into an alternative format. In either event, Rogers was required within 30 days to send a notice of extension to Ms. Kollar advising her of the new time limit, the reasons for extending the time limit, and of her right to make a complaint to the Commissioner in respect of the extension. Rogers did not respect that requirement.

II. Discussion

[12] Ms. Kollar is suspicious that Rogers has not produced all her personal information. However, irrespective of what was before the Office of the Privacy Commissioner, I have been provided with three affidavits. The affiants were not cross-examined and I am satisfied that all the documentation on file has been provided.

[13] Ms. Kollar complains that some of the information with respect to salaries, bonuses and commissions is sketchy. That may or may not be so, but I cannot order Rogers to create a document

which does not exist. All records required by the *Canada Labour Code* to be maintained were maintained.

[14] Ms. Kollar would like a letter of apology. I cannot order someone to apologize.

[15] Ms. Kollar would like me to order that a notice, the details of which she did not specify, be published in Rogers' newsletter. In my view, the notice published in the Human Resources newsletter was sufficient.

[16] As to her request that Rogers be ordered to change its practices, there is nothing wrong with its practices. The problem was that certain individuals did not observe those practices. There is no reason to believe that the reminder by Rogers, following the Commissioner's report, is not sufficient.

[17] Ms. Kollar seeks damages, but made no argument whatsoever in support thereof. I see no basis for such an award.

[18] As for costs, since there was no basis whatsoever for this application, in the normal course I would have awarded costs to Rogers. However, for its part Rogers was quite aggressive in defence of this application. In reality its defence was a cross-application in that it asked the Court to hold that the Commissioner was wrong in finding that it was in breach of the Act. Three affiants, who were not cross-examined, testified as to the diligence exercised in gathering the requested information. One would almost think that they worked night and day for more than six months.

However, Mr. Kollar's original request was misconstrued. She did not simply ask for her personnel file, but for all information. Rogers was wrong in providing a personnel file and not providing information that had been kept in electronic form. Based on the material before me, I am not satisfied that due diligence had been exercised and certainly the 30-day delay was missed. Had it communicated with her earlier, perhaps Ms. Kollar would not have thought she had been simply cast to the wayside.

[19] This is an application which should not have been taken, and an application which should not have been defended the way it was. In the circumstances it shall be dismissed, each party paying its own costs.

ORDER

FOR REASONS GIVEN;

THIS COURT ORDERS that the application for judicial review is dismissed, each party paying its own costs.

"Sean Harrington"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-518-10
STYLE OF CAUSE:	EVE KOLLAR v. ROGERS COMMUNICATIONS INC.
PLACE OF HEARING:	Vancouver, BC
DATE OF HEARING:	April 5, 2011
REASONS FOR ORDER AND ORDER:	HARRINGTON J.
DATED:	April 12, 2011

APPEARANCES:

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Howard A. Levitt	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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