

Federal Court of Appeal



Cour d'appel fédérale

Date: 20230914

Docket: A-33-23

Citation: 2023 FCA 189

**CORAM: BOIVIN J.A.
LOCKE J.A.
ROUSSEL J.A.**

BETWEEN:

TAMARA JAMES

Appellant

and

AMAZON.COM.CA, INC.

Respondent

Heard at Montréal, Quebec, on September 14, 2023.
Judgment delivered from the Bench at Montréal, Quebec, on September 14, 2023.

REASONS FOR JUDGMENT OF THE COURT BY:

LOCKE J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Montréal, Quebec, on September 14, 2023).

LOCKE J.A.

[1] Tamara James appeals a decision of the Federal Court (2023 FC 166, *per* Justice Yvan Roy) that dismissed her application pursuant to section 14 of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 (PIPEDA). For the following reasons, the appeal will be dismissed.

[2] Subsection 14(1) of PIPEDA contemplates an application concerning any matter in respect of which a complaint was made to the Office of the Privacy Commissioner (the Commissioner) pursuant to certain provisions of PIPEDA once the Commissioner has issued a report regarding the complaint or has indicated that the investigation of the complaint has been discontinued.

[3] In this case, Ms. James made a complaint pursuant to PIPEDA against the respondent, Amazon.com.ca, Inc. (Amazon) for denying her access to her personal information in its possession following her unsuccessful attempts to access the information. The Commissioner subsequently indicated that the investigation of the complaint would be discontinued because Amazon's denial of access to personal information was due to an inability to verify her identity. The Commissioner found Amazon's response to be fair and reasonable. Ms. James was unable to provide the password that Amazon had associated with the relevant information. Ms. James was also unwilling to take the steps required to reset the password.

[4] The Federal Court agreed with the Commissioner that Amazon had not been shown to violate Ms. James' rights to access her personal information (pursuant to Principle 9 set out in Schedule 1 of PIPEDA) where it could not verify her identity. To the contrary, the Federal Court found that Amazon could have been faulted for disclosing such information without proper authorization.

[5] The Federal Court rejected Ms. James' allegation that her inability to gain access to the information in question was because of some inaccuracy in such information, in contravention of

Principle 6. The Federal Court noted that this allegation had not been raised in the complaint to the Commissioner, and further that there was no evidence to support the allegation.

[6] The Federal Court also rejected Ms. James' argument that Amazon had failed to respond in a timely manner to her request for access to personal information. The Federal Court found that the timeframe for a response (as contemplated in subsection 8(3) of PIPEDA) would not begin until Amazon was able to confirm Ms. James' identity.

[7] Ms. James raises several issues on appeal, which can be summarized as follows:

- A. That the Federal Court erred in raising new issues;
- B. That the Federal Court erred in finding no violation of Principle 9 relating to individual access to information; and
- C. That the Federal Court erred in limiting the scope of its jurisdiction under Principle 6 relating to accuracy of information.

[8] Because the Federal Court hears an application under section 14 of PIPEDA *de novo* (without deference to the Commissioner), the normal appellate standard of review described in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, applies. Questions of law are reviewed on a standard of correctness, and only in cases of palpable and overriding error will this Court intervene on questions of fact or of mixed fact and law from which no issue of law is extricable.

Palpable and overriding error means an error that is obvious and goes to the very core of the outcome of the case: *Canada v. South Yukon Forest Corporation*, 2012 FCA 165, 431 N.R. 286 at para. 46.

[9] Ms. James' arguments in respect of the issues she raises are too numerous to address each individually. It is sufficient to say that we are not convinced that the Federal Court erred in law or made any palpable and overriding error on any of the issues she raises.

[10] The alleged new issues raised by the Federal Court concern Exhibit H to Ms. James' affidavit, which includes documents related to a contested credit card transaction. The Federal Court noted that the transaction in question involved a Tashesha James. Despite noting Ms. James' claim that she and Tashesha James are the same person, the Federal Court found the information in Exhibit H to be of limited assistance because of the lack of supporting documentation and information. The Federal Court appears to have erred in its statement at paragraph 23 of its reasons that the billing address on the receipt for shipment was in the name of Tashesha James, however this is not an overriding error since that name does appear in Exhibit H.

[11] The Federal Court did not raise a new issue. Rather, it concluded that some of Ms. James' evidence was insufficient to support her argument. That conclusion was open to the Federal Court. Moreover, the question of Ms. James' identity was squarely in issue before both the Federal Court and the Commissioner before that.

[12] We also wholly reject Ms. James' argument that the Federal Court's analysis on this issue gives rise to reasonable apprehension of bias. The record comes nowhere close to meeting the test to support such a serious allegation.

[13] With regard to the Federal Court's finding that Amazon did not violate Principle 9, we see no reviewable error. The Federal Court relied on the evidence before it to conclude that there was sufficient doubt as to Ms. James' identity to justify Amazon seeking further information before providing the requested personal information. The Federal Court was entitled to reach such a conclusion. Although it would have been preferable to do so, its failure to mention explicitly subsection 8(7) of PIPEDA was not an error since it clearly considered the provision.

[14] The Federal Court was likewise entitled to find that the evidence was insufficient to support Ms. James' allegation that her inability to access the information in question was due to inaccuracies therein.

[15] The appeal will accordingly be dismissed with costs in the all-inclusive amount of \$500.

"George R. Locke"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-33-23

STYLE OF CAUSE: TAMARA JAMES v.
AMAZON.COM.CA, INC.

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: SEPTEMBER 14, 2023

**REASONS FOR JUDGMENT OF THE COURT
BY:** BOIVIN J.A.
LOCKE J.A.
ROUSSEL J.A.

DELIVERED FROM THE BENCH BY: LOCKE J.A.

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