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Kadara Thompson		
Court File	OTT NO.: T-	- 1

Ottawa Registry

**FEDERAL COURT -- TRIAL DIVISION**

BETWEEN:

**CALVIN SANDIFORD**

Applicant

AND:

**THE ATTORNEY GENERAL OF CANADA**

Respondent

Application for Judicial Review under Sections 41, 48 and 49 of the  
*Privacy Act*, R.S.C., 1985, c. P-21 and Rules 3 and 4 of the *Federal Courts*  
*Rules*, 1997, SOR/98-106

**NOTICE OF APPLICATION**

**TO THE RESPONDENT:**

**A PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the Applicant. The relief claimed by the Applicant appears below.

**THIS APPLICATION** will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at 90 Sparks Street, Ottawa, Ontario K1A 0H9, Canada.

**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 a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

**IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

**IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

**Date:**

**Issued by:** \_\_\_\_\_  
(Registry Officer) (Signature)  
**Address of local office:** Thomas D'Arcy McGee Building  
90 Sparks Street, Main Floor  
Ottawa, Ontario  
K1A 0H9, Canada  
  
Phone: (613) 992-4238  
Facsimile: (613) 952-3653

**TO: The Registrar**  
Federal Court  
Thomas D'Arcy McGee Building  
90 Sparks Street, Main Floor  
Ottawa, Ontario  
K1A 0H9, Canada

**AND TO: The Attorney General of Canada**  
  
**Deputy Attorney General of Canada**  
Office of the Deputy Attorney General of Canada  
284 Wellington Street  
Ottawa, Ontario  
K1A 0H8, Canada

## **APPLICATION**

This is an application for Judicial Review pursuant to section 41 of the *Privacy Act*. This Judicial Review is brought against the Respondent as a consequence of the findings by the Privacy Commissioner issued 6<sup>th</sup> February 2023. The Privacy Commissioner concluded that the Respondent failed to comply with the law on two interconnected occasions. The Privacy Commissioner also concluded that the Respondent failed in the execution of their duty to turn over documents and materials to the Applicant in accordance with the *Privacy Act*. The findings were received by the Applicant on or around 14<sup>th</sup> February 2023. The Privacy Commissioner found that the complaint made by the Applicant against the Respondent was Well-Founded. As a result of these final findings the file was closed by the Privacy Commissioner. The Applicant now seeks redress through the operation of the law from the Federal Court of Canada.

### **THE APPLICANT MAKES APPLICATION FOR:**

1. An Order directing the Respondent to comply with the request that the Applicant made pursuant to the *Privacy Act* to turn over the documents and material. This request was made on or around 27<sup>th</sup> April 2020. The Respondent agreed to turn over the documents and material without any legal hesitation on 10<sup>th</sup> August 2020;
2. A Declaration that by withholding this information the Respondent violated the Applicant's rights under the *Charter of Rights and Freedoms* [*Charter*] section 7 because the Respondent withheld the Applicant's medical information from him without lawful cause. Withholding of such information was inconsistent with section 1 of the *Charter*;

3. A Declaration that in accordance with the principles established in *Paradis Honey Ltd., Honeybee Enterprises Ltd. and Rocklake Apiaries Ltd. v. Her Majesty the Queen, et al.* 2015 FCA 89 the Respondent abused the Administrative Process by the way they handled the non-release of the Applicant's requested materials
  
4. In accordance to the powers granted to the Court pursuant to sections 41, 48 and 49 of the *Privacy Act*, and Rules 3 and 4 of the *Federal Courts Rules, 1997*, an Order that:
  - (a) as this statutory process of Judicial Review is executed pursuant to section 41 of the *Privacy Act* and as the scope of the powers granted to the Court are wide under sections 48 and 49 of the *Privacy Act* as well as in keeping with the Court's inherent power, as the section 41 *Privacy Act* process has no power to award damages the Applicant seeks an Order that upon the fulfilment of the statutory process pursuant to section 41 of the *Privacy Act* that the matter be converted to an Action in keeping with the power accorded within Rules 3 and 4 of the *Federal Court Rules*, and in keeping with the Judicial Review principles that encompass section 18.4(2) of the *Federal Court Act* in accordance with the principles of justice and the Court's inherent power and jurisdiction in this matter;
  
  - (b) given that as the actions of the Respondent are inconsistent with section 7 of the *Charter*, and that such inconsistency cannot be demonstrably justified in a Free and Democratic Society as the acts of the Respondent are contrary to section 1 of the *Charter* and as this statutory process of Judicial Review is

pursuant to section 41 of the *Privacy Act* and as the scope of the powers granted to the Court are wide under sections 48 and 49 of the *Privacy Act* as well as in keeping with the Court's power under the *Federal Court Act* and the *Federal Court Rules*, 1997, inherent power, as the section 41 *Privacy Act* process has no power to award damages for violations of the *Charter* pursuant to section 24 of the *Charter*, and as the Applicant states that his *Charter* rights have been violated and seek a Declaration that the Applicant's rights under the *Charter* were violated by the actions of the Respondent contrary to the principles established in *Eldridge v. British Columbia (Attorney General)* [1997] 3 S.C.R. 624 and *McInerney v. MacDonald*, [1992] 2 S.C.R. 138, the Applicant respectfully requests that the matter upon completion of section 41 before the Court be converted to an Action in keeping with the power accorded within Rules 3 and 4 of the *Federal Court Rules*, and in keeping with the Judicial Review principles that encompass section 18.4(2) of the *Federal Court Act* in accordance with the principles of justice and the Court's inherent power and jurisdiction in this matter; and

- (c) that upon completion of the statutory process pursuant to section 41 of the *Privacy Act* that the matter be converted to an Action in accordance with Rules 3 and 4 of the *Federal Court Rules*, and in keeping with the judicial principles that encompass section 18.4(2) of the *Federal Court Act* in accordance with the principles of justice and the Court's inherent power and jurisdiction in this matter;

5. a hearing of this matter on an expedited basis;
6. such further and other relief as counsel may advise and as this Honourable Court may deem just.

**THE GROUNDS FOR THE APPLICATION ARE:**

**Overview**

1. This application arises out of the application for personal information that the Applicant made pursuant to the *Privacy Act* to the Respondent on or around 27<sup>th</sup> April, 2020.
2. The Respondent servant and/or agent and/or subcontractor [Agent], Ms. Manon Rivest, on or around 28<sup>th</sup> May 2020 contacted the Applicant and acknowledged receipt of the request.
3. In the correspondence of 28<sup>th</sup> May 2020, the Respondent's Agent, Ms. Manon Rivest, in her acknowledgement of receipt also sought clarification with respect to the Applicant's request. Throughout this statutory internal process, the Respondent never raised any objection under the *Privacy Act* to the release of any aspect of the Applicant's personal information to him.
4. The Applicant gave his response to the Respondent's on or around 9<sup>th</sup> June 2020.

5. On or around 10<sup>th</sup> August 2020, after receiving the correspondence from the Applicant, the Respondent without any statutory claims or statements of statutory limitation under the *Privacy Act* or otherwise agreed to comply with the Applicant's request.
  
6. On or around 9<sup>th</sup> January 2022 the Applicant filed a complaint with the Privacy Commissioner that the Respondent had not complied with the Applicant's request for his personal information because the Respondent failed to honour their promise as outlined in paragraph 5 above.
  
7. On or around 7<sup>th</sup> July 2022 the Privacy Commissioner's Agent, Élisabeth Boutin-Bruce, issued her first finding. In that finding of the Privacy Commissioner, the Privacy Commissioner stated:
  - (a) The Applicant's complaint was Well Founded;
  - (b) The Privacy Commissioner considered the matter "Conditionally Resolved" as the Respondent promised the Privacy Commissioner to respond to the Applicant's request by 19<sup>th</sup> October 2022.
  - (c) The Privacy Commissioner closed the file and informed the Respondent of their determination.
  - (d) The Privacy Commissioner informed the Applicant that should the Applicant not receive a response from the Respondent by the above-mentioned date the Applicant may contact their Office again and request that the Privacy

Commissioner reopen the complaint file.

8. On 29<sup>th</sup> August 2022 the Applicant's mother died. The Applicant was taken up with grief and was dealing with matters related to his late mother's estate.
9. On or around 1<sup>st</sup> December 2022 the Applicant contacted Ms. Élisabeth Boutin-Bruce to inform the Privacy Commissioner that the Responded did not comply with the promise that they made to them. At that time the Applicant sent the same correspondence to the following:
  - (a) Justin Trudeau, Prime Minister, [pm@pm.gc.ca](mailto:pm@pm.gc.ca) and, [justin.trudeau@parl.gc.ca](mailto:justin.trudeau@parl.gc.ca);
  - (b) David Lametti, MP, Attorney General, [david.lametti@parl.gc.ca](mailto:david.lametti@parl.gc.ca);
  - (c) Lawrence MacAulay, Minister of Veterans Affairs Canada  
[vac.ministerministre.acc@canada.ca](mailto:vac.ministerministre.acc@canada.ca);
  - (d) Anita Anand MP, Minister of National Defence, [Anita.Anand@parl.gc.ca](mailto:Anita.Anand@parl.gc.ca);
  - (e) Jagmeet Singh MP, Leader of the NDP, [Jagmeet.Singh@parl.gc.ca](mailto:Jagmeet.Singh@parl.gc.ca).
10. On or around 14<sup>th</sup> February 2023 the Applicant received the final findings from the Privacy Commissioner's agent. The Privacy Commissioner's letter is dated 6<sup>th</sup> February, 2023. In that letter *inter alia* it the Privacy Commissioner outlined the next steps that could be followed.

11. In their findings the Privacy Commissioner found the following:
- (a) Following the investigation into the complaint, the Privacy Commissioner concluded that the matter was Well-Founded;
  - (b) Previously, as the Respondent had agreed to respond to the request by 19<sup>th</sup> October 2022, the Privacy Commissioner had considered the matter conditionally resolved and closed the file;
  - (c) On 1<sup>st</sup> December, 2022 the Applicant contacted the Privacy Commissioner, alleging that the commitment date which the Respondent gave the Privacy Commissioner was not respected;
  - (d) The Privacy Commissioner investigated the Applicant's allegations.
  - (e) The Privacy Commissioner consider the matter to be a deemed refusal by the Respondent because:
    - (i) the Respondent failed to satisfy the legislative requirements for responding to the *Privacy Act* request,
    - (ii) the Respondent did not respect its own commitment date which the Respondent provided to the Privacy Commissioner's office; and
    - (iii) the Respondent provided no response to either the Privacy Commissioner or the Applicant as of 20<sup>th</sup> January 2023
12. The Privacy Commissioner closed the file because of the Respondent's refusal to respond to requests. This was taken by the Privacy Commissioner that the Respondent will not be providing the requested records in response to the submitted

application request made first by the Applicant and then statutorily followed up by the Privacy Commissioner.

13. It is submitted that the Applicant has exhausted the statutory internal process under the *Privacy Act* through the complaint procedure with the Privacy Commissioner. As that process has been exhausted the Applicant seeks judicial recourse in the manner outlined above through the section 41 of the *Privacy Act* process. The Applicant seeks the aforementioned Declarations asked for and the conversion of the relevant aspects of this Judicial Review into an Action.

#### **Statutory Provisions, Rules and Principles:**

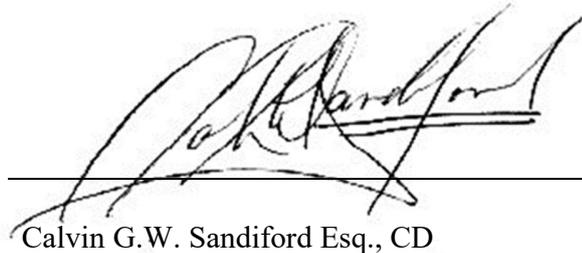
1. *Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11;*
2. *National Defence Act, R.S.C. 1985, c, N-5*
3. *Canadian Forces Members and Veterans Re-establishment and Compensation Act, SC 2005, c 21;*
4. *Veterans Well-being Act, SC 2005, c 21, effective 1<sup>st</sup> April, 2018;*
5. *Veterans Affairs Act R.S.C., 1985, c. V-1;*
6. *Privacy Act, R.S.C., 1985, c. P-21;*
7. *The Federal Court Act, R.S.C. 1985, c. F-7, s. 18 and 18.1;*
8. *Federal Court Rules, 1998 (SOR/98-106) Rules 300–18;*
9. The Principles of Fiduciary Duty and the Rules of Equity;
10. Principles of Federal Common Law;

11. *Paradis Honey Ltd., Honeybee Enterprises Ltd. and Rocklake Apiaries Ltd. v. Her Majesty the Queen, et al.* 2015 FCA 89;
12. *Eldridge v. British Columbia (Attorney General)* [1997] 3 S.C.R. 624;
13. *McInerney v. MacDonald*, [1992] 2 S.C.R. 138; and
14. Such other materials as counsel may advise and this Honourable Court may permit.

**The following material will support the application:**

1. The affidavit of the Applicant;
2. Such other materials as the Applicant may advise and this Honourable Court may permit.

5<sup>th</sup> March, 2023



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