

## PRIVACY

### PERSONAL INFORMATION PROTECTION AND ELECTRONIC DOCUMENTS ACT

Appeals from orders by Prothonotary dismissing motions by Canadian Broadcasting Corporation (CBC), coalition of various media organizations (media coalition), Google LLC (Google) — Complainant filing complaint with Office of the Privacy Commissioner of Canada (OPC) alleging Google contravening *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 (PIPEDA) by continuing to display links in its search results to news articles concerning complainant— During OPC’s investigation, Google raising two preliminary jurisdictional issues — Those issues submitted as reference questions by OPC to Court— Prothonotary dismissing motions by CBC, media coalition to be added as parties to reference on grounds premature for them to participate in proceedings at this stage — Prothonotary finding, *inter alia*, that presence of CBC, media coalition neither proper nor necessary for reference, nor required for full, effectual determination of all issues — Also dismissing Google’s motion to expand scope of reference questions to address constitutional issues on grounds that reference questions, as framed, were appropriate — Prothonotary holding not having authority to vary scope of reference questions — Main issues whether Prothonotary erring by precluding Google from raising constitutional argument or response to *Federal Courts Act*, R.S.C., 1985, c. F-7 (Act), s. 18.3 reference application, whether CBC, media coalition should be added as parties or interveners — Prothonotary not erring by precluding Google from raising constitutional argument in reference proceeding — Correctly interpreting Act, s. 18.3, *Federal Courts Rules*, SOR/98-106, r. 321 — Questions to be answered on reference within sole purview, discretion of Tribunal, need not be ultimate question at issue before them — Issue of constitutionality not “inextricably intertwined” with reference questions — Google attempting to rely on its constitutional arguments as response to jurisdictional issue raised in reference — For PIPEDA to “infringe” Google’s rights, PIPEDA must first apply to Google — There was no indication that PIPEDA, in any way, limited the operation of a search engine — It was possible to answer the jurisdictional question without answering the constitutional question — Jurisdictional question only asking whether PIPEDA applied, not whether it infringed Google’s rights— Not possible to answer constitutional question without first determining if PIPEDA applying — Google still free to raise constitutional objection at any stage in underlying proceeding if unsuccessful at jurisdictional stage — Cannot raise it in reference proceeding because not yet relevant to legal analysis — Prothonotary not erring by deferring to judge hearing application ultimate determination as to whether reference questions can be answered as framed — CBC’s interest not rising to sufficient level to make it a necessary party — *Canadian Bill of Rights*, S.C. 1960, c. 44 not applying to allow CBC to take part in proceedings as party herein — *Canadian Bill of Rights*, s. 2(e) creating no substantive right to hearing where some form of hearing not already provided by law — If no right to hearing provided by law, PIPEDA not depriving any person of right to fair hearing — No determination of CBC’s rights, obligations in this case, *Canadian Bill of Rights*, s. 2(e) not applying — CBC’s application for leave to intervene premature — Prothonotary’s decision not preventing CBC from bringing another motion for leave to intervene — Appeals dismissed.

REFERENCE RE SUBSECTION 18.3(1) OF THE *FEDERAL COURTS ACT* (T-1779-18, 2019 FC 957, Gagné A.C.J., reasons for order dated July 22, 2019, 28 pp.)