



How to apply for a Federal Court hearing under PIPEDA

Notice

This document does not constitute legal advice and should not be relied on as a substitution for reading the [Federal Court Rules](#), which can be found on the [Department of Justice Canada](#) website.

Under [sections 14 and 15 of the Personal Information Protection and Electronic Documents Act](#) (PIPEDA), a complainant or the Office of the Privacy Commissioner (OPC) may, in certain circumstances, apply to the Federal Court for a hearing before the [Federal Court of Canada](#) in respect of any matter referred to in the Commissioner's report of findings from an investigation and listed under section 14.

Considering that a section 14 application is a legal proceeding commenced by a complainant in the Federal Court of Canada, the OPC has prepared the following information to help complainants understand their rights and guide them through the process of applying to the Federal Court for a hearing.

Introduction

This document is intended to provide helpful information to guide complainants through the process of applying to the Federal Court for a hearing under section 14 of the *Personal Information Protection and Electronic Documents Act* (PIPEDA).¹

What is a section 14 application?

A section 14 application is a request for a hearing in Federal Court regarding a matter about which a complaint was made to the Privacy Commissioner of Canada about how an organization handles personal information.

The complainant may make this application only after the Commissioner has investigated the matter and issued his final report, or after the complainant has been notified that the investigation has been discontinued under subsection 12.2(3).

What are the issues involved?

A section 14 application is made in relation to the matter originally complained about, or referred to in the report the Commissioner issued after his investigation into the matter.

Specifically, section 14 states that the matter complained of must relate to one of the following sections of PIPEDA or principles under Schedule 1:

¹ *Personal Information Protection and Electronic Documents Act*, 2000, S.C. c. 5 [PIPEDA].

PIPEDA

- Subsection 5(3): “An organization may collect, use or disclose personal information only for purposes that a reasonable person would consider are appropriate in the circumstances.”
- Subsection 8(6): “An organization may respond to an individual’s request at a cost to the individual only if (a) the organization has informed the individual of the approximate cost; and (b) the individual has advised the organization that the request is not being withdrawn.
- Subsection 8(7): “An organization that responds within the time limit and refuses a request shall inform the individual in writing of the refusal, setting out the reasons and any recourse that they may have under this Part.”
- Section 10: An organization shall give access to personal information in an alternative format to an individual with a sensory disability who has a right of access to personal information under this Part and who requests that it be transmitted in the alternative format if (a) a version of the information already exists in that format; or (b) its conversion into that format is reasonable and necessary in order for the individual to be able to exercise rights under this Part.
- Division 1.1, which contains provisions relating to breaches of security safeguards.²

Schedule 1

- Clause 4.1.3: “An organization is responsible for personal information in its possession or custody, including information that has been transferred to a third party for processing. The organization shall use contractual or other means to provide a comparable level of protection while the information is being processed by a third party.”
- Clause 4.2: “The purposes for which personal information is collected shall be identified by the organization at or before the time the information is collected.”
- Clause 4.3: “The knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where inappropriate.”
- Clause 4.3.3: “An organization shall not, as a condition of the supply of a product or service, require an individual to consent to the collection, use, or disclosure of information beyond that required to fulfill the explicitly specified, and legitimate purposes.”
- Clause 4.4: “The collection of personal information shall be limited to that which is necessary for the purposes identified by the organization. Information shall be collected by fair and lawful means.”
- Clause 4.5: “Personal information shall not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual or as required by law. Personal information shall be retained only as long as necessary for the fulfillment of those purposes.”
- Clause 4.6: “Personal information shall be as accurate, complete, and up-to-date as is necessary for the purposes for which it is to be used.”
- Clause 4.7: “Personal information shall be protected by security safeguards appropriate to the sensitivity of the information.”

² Division 1.1 will come into force on a day to be fixed by order of the Governor in Council.

- Clause 4.8: “An organization shall make readily available to individuals specific information about its policies and practices relating to the management of personal information.”
- Clause 4.9: “Upon request, an individual shall be informed of the existence, use, and disclosure of his or her personal information and shall be given access to that information. An individual shall be able to challenge the accuracy and completeness of the information and have it amended as appropriate.”

What is the purpose of a section 14 application?

The purpose of a section 14 application is to ask the Court to examine the conduct of the organization against which the original complaint was made; it is *not* to review the report that was prepared by the Privacy Commissioner.

What evidence must be brought forward?

The Federal Court takes a fresh look at the evidence produced by both parties. The applicant will be required to submit detailed evidence by way of affidavit. The applicant bears the ultimate burden of demonstrating that the organization violated its obligations under PIPEDA.

Why would I want to file an application under section 14 of PIPEDA?

Because the recommendations in the Privacy Commissioner’s report are not legally binding,³ applicants may bring a section 14 application to have those recommendations enforced by a Court. The applicant may also ask the Court to make other orders against the respondent organization. For more information on the remedies available, see Question 4.

In cases where the Privacy Commissioner finds the complaint not well-founded, the applicant may disagree with that finding and ask the Court to issue a ruling to the contrary.

What can the Federal Court order in the context of a section 14 application?

Section 16 of PIPEDA provides the Court with the authority to award remedies to the complainant. In addition to any other remedies the Court may award, the Court is specifically empowered to:

- Order an organization to correct its practices to comply with sections 5 to 10 of PIPEDA;
- Order the organization to publish a notice of any of the actions taken or proposed to be taken to correct its practices to comply with the Act;
- Order the organization to pay damages, including damages for humiliation suffered by the complainant.

Do I need to have a lawyer to bring an application to the Federal Court?

You do not need to have a lawyer to commence and proceed with a section 14 application in Federal Court. Although the experience and expertise of legal counsel may assist you in this process, you may choose to represent yourself.

³ However, in some cases the Privacy Commissioner may enter into an enforceable compliance agreement with an organization, which may contain any terms the Privacy Commissioner considers necessary to ensure the organization complies with PIPEDA. The presence of a compliance agreement, however, does not preclude an individual from exercising any available right to file a section 14 application.

Who can file an application with the Federal Court?

Under PIPEDA, it is the individual complainant who may file a section 14 application in Federal Court, not the respondent organization.

What is the role of the Privacy Commissioner in this process?

Under sections 14 and 15 of the [Personal Information Protection and Electronic Documents Act \(PIPEDA\)](#), a complainant or the Office of the Privacy Commissioner (OPC) may, in certain circumstances, apply for a hearing before the [Federal Court of Canada](#) in respect of any matter referred to in the Commissioner's report of findings from an investigation and listed under section 14.

When can a section 14 application be filed?

A complainant may only file a section 14 application after they have received a report from the Privacy Commissioner, or after they have received notice that the investigation is being discontinued under subsection 12.2(3).

A complaint will not lead to the issuance of a report, where:

The Commissioner declines to investigate

Subsection 12(1) of PIPEDA states that the Privacy Commissioner is not required to investigate a complaint where he is of the opinion that:

- the complainant ought first to exhaust grievance or review procedures otherwise reasonably available;
- the complaint could be more effectively dealt with by means of a procedure provided under a federal or provincial law (other than PIPEDA); or
- the complaint was not filed within a reasonable period of time after the incident complained of.

If the Privacy Commissioner decides not to investigate the complaint, he will inform both the complainant and the respondent organization and provide his reasons for this decision. The individual will not be able to make a section 14 application in this case. The Commissioner may reconsider the decision not to investigate if he is satisfied that the complainant has established that there are compelling reasons to investigate.

The Commissioner lacks jurisdiction to investigate

Also, the Privacy Commissioner will not issue a report in cases where he lacks the jurisdiction to take the complaint.

The Commissioner discontinues an investigation

Once an investigation is under way, under section 12.2, the Commissioner may discontinue the investigation of a complaint if he is of the opinion that:

- there is insufficient evidence to pursue the investigation;
- the complaint is trivial, frivolous or vexatious or is made in bad faith;
- the organization has provided a fair and reasonable response to the complaint;
- the matter is the object of a compliance agreement entered into under subsection 17.1(1) of PIPEDA;

- the matter is already the object of an ongoing investigation under PIPEDA;
- the matter has already been the subject of a report by the Privacy Commissioner;
- the complainant ought first to exhaust grievance or review procedures otherwise reasonably available;
- the complaint could be more effectively dealt with by means of a procedure provided under a federal or provincial law (other than PIPEDA);
- the complaint was not filed within a reasonable period of time after the incident complained of;
- the matter is being or has already been addressed under grievance or review procedures otherwise reasonably available or by a procedure provided under a federal or provincial law (other than PIPEDA); or
- the Commissioner may also discontinue an investigation in respect of an act alleged in a complaint if the Commissioner is of the opinion that the act, if proved, would constitute a contravention of certain provisions in Canada's anti-spam legislation or the *Competition Act*.

If an investigation has been discontinued, the Privacy Commissioner will provide the complainant and the respondent organization with notice of that decision. The complainant may then bring a section 14 application in Federal Court.

Who is the respondent (i.e. the other side) in a section 14 application?

The Federal Court has explained that what is at issue in a section 14 application “is not the Commissioner’s report, but the conduct of the party against whom the complaint is filed.”⁴

Therefore, the respondent in a section 14 application is the organization in relation to which the applicant brought the original complaint to the Privacy Commissioner.

Are there time limits on when I can file my application?

Subsection 14(2) of PIPEDA requires that the applicant bring the application within one year after the Privacy Commissioner’s report or notice of discontinuance of an investigation is sent, or within any longer period that the Court may allow.

What happens if I miss the deadline?

There are instances in which the time limit for the section 14 application can be extended. However, this decision does not lie with the Office of the Privacy Commissioner. The applicant is required to bring a motion to the Federal Court requesting an extension. This involves filing and serving a Notice of Motion.

The Court has discretion to permit the applicant to bring the application, despite missing the filing deadline. The Court will examine whether the applicant meets the criteria established in the case law when deciding whether or not to exercise its discretion. The case law outlines the relevant criteria including the following:

1. whether the applicant intended to apply to the Court within the limitation period set out;
2. the length of the period for which an extension would be required;

⁴ *Englander v. Telus Communications* 2004 FCA (C.A.) at para 47 or [2005] 2 F.C.R. 572.

3. whether any and what prejudice to an opposing party would result from an extension being granted; and
4. whether the applicant has an arguable case.⁵

What are the steps involved in a section 14 application?

Step 1: Notice of Application

Within one year after the Privacy Commissioner's report or notice of discontinuance of the investigation is sent, the applicant seeking court review under section 14 must file a Notice of Application with the Federal Court Registry. This document includes the names of the parties and informs the respondent organization that it is implicated in a section 14 application under PIPEDA.

The Notice of Application must conform with the Federal Courts Rules, and must set out the precise remedies sought, and state the grounds to be argued before the Court. The Notice of Application must also indicate whether the applicant will be relying on one or more affidavits.

Once the Notice of Application is stamped and, therefore, issued by the Federal Court Registry, it must be served on all respondents within 10 days.

Additionally, Federal Courts Rule 304(1)(c) provides that the Notice of Application must be served on the Privacy Commissioner within 10 days, even though he is not a party to the proceedings.

The applicant must file proof with the Court that they have served the respondent organization and the Privacy Commissioner within 10 days of serving the Notice of Application, by filing an Affidavit of Service with the Registry.

Step 2: Notice of Appearance

If the respondent intends to oppose the application, they are required to serve the Applicant with its Notice of Appearance, and file it with the Court, within 10 days of receiving the applicant's Notice of Application. This document indicates that the respondent will participate in the section 14 Court proceeding.

Under Federal Courts Rule 145, if the respondent does not acknowledge the Notice of Application with a Notice of Appearance, the applicant is no longer required to serve the respondent with further documentation that it files with the Court before the hearing.

Step 3: Applicant's Affidavits and Documentary Exhibits

The applicant's supporting affidavit(s) and documentary exhibits have to be served on the respondent, and proof of service must be filed with the Registry, within 30 days from when the applicant filed the Notice of Application with the Registry.

For more information on affidavits see Question 16.

Step 4: Respondent's Affidavit and Documentary Exhibits

The respondent's supporting affidavit(s) and documentary exhibits have to be served on the applicant, and proof of service must be filed with the Federal Court Registry, within 30 days from the date the respondent was served with the applicant's affidavit(s).

⁵ *Clearwater v. Canada (Minister of Canadian Heritage)* [1999] 177 F.T.R. 103 at para. 16 [Clearwater].

For more information on affidavits, see Question 16.

Step 5: Cross-examination on Affidavits

The applicant and respondent must complete the cross-examination on each other's affidavits within 20 days after the filing of the respondent's affidavit or the expiry of the time for doing so, whichever is earlier.

For more information on cross-examining on affidavits, see Question 17.

Step 6: Applicant's Record

The Applicant's Record is required to be served on the respondent and filed with the Federal Court within 20 days after the parties have completed cross-examining each other, or the time limit provided for them to do so.

NOTE: The full Applicant's Record and Respondent's Record includes the following documentation:

1. table of contents with nature and date of each document included;
2. Notice of Application;
3. any order in respect of which the application is made and any reasons, including dissenting reasons, given in respect of that order;
4. each supporting affidavit with its documentary exhibits;
5. transcript of any cross-examination on the affidavits that the applicant has conducted;
6. the portions of any transcript of oral evidence before a tribunal that are to be used by the applicant at the hearing;
7. description of any physical exhibits the party intends to use at the hearing; and
8. the applicant's Memorandum of Fact and Law.

For more information on the Memorandum of Fact and Law see Question 17.

Step 7: Respondent's Record

The respondent must serve the applicant with the Respondent's Record and file it with the Federal Court within 20 days from the date of service of the Applicant's Record. The Respondent's Record must contain the respondent's version of the documents described in items 1 and 4-8 for the Applicant's Record.

Step 8: Requisition for Hearing Date

The Requisition for Hearing Date must be prepared by the applicant, filed with the Registry and served on the respondent within 10 days of either the date the respondent served the Respondent's Record or the time allotted for him or her to do so.

Federal Courts Rule 314 provides that the requisition should include:

- (a) a statement that the requirements of subsection 309(1) have been satisfied (service and filing of Applicant's Record) and that any notice required under section 57 of the *Federal Courts Act* (notice of constitutional question) has been given;
- (b) set out the place at which the hearing should be held;

- (c) set out the maximum number of hours or days required for the hearing;
- (d) list any dates within the following 90 days on which the parties are not available for a hearing;
- (e) set out the name, address, telephone number and fax number of the solicitor for every party to the application or, where a party is not represented by a solicitor, the person's name, address, telephone number and any fax number; and
- (f) indicate whether the hearing will be in English or French, or partly in English and partly in French.

Are there particular formatting requirements for documents filed with the Federal Court?

All documents filed with the Court must be printed on letter size (8" ½ X 11") white paper and should only appear on one side of the page. The font must not be smaller than 12 point. There can be no more than 30 lines per page, not including headings.

For more details, see [rules 65-70](#) of the Federal Court Rules, which can be found on the Department of Justice Canada website.

What is involved in serving documents on the respondent?

There are various ways that documents can be served on (i.e. delivered to) the other parties involved, including handing them to the relevant person and sending them by registered mail or fax. The Notice of Application must be served personally on the respondent, and Federal Courts Rules 128 to 137 describe the process for personal service which will vary according to whether the respondent is an individual, a corporation, a partnership, etc. For every document that the applicant serves on the respondent, the applicant must also file proof of service with the Registry, through an affidavit of service that affirms the documents were served within the appropriate timeframe.

For more information on serving documents, see the [Federal Courts Rules](#), which can be found on the Department of Justice Canada website.

What is involved in serving the Privacy Commissioner of Canada?

For all section 14 applications, once you file your application with the Federal Court, you must serve the Privacy Commissioner of Canada with a copy of the Notice of Application within 10 days. This is mandated by subrule 304(1)(c) of the *Federal Courts Rules*.

You must serve the Privacy Commissioner directly. Sending a copy of the Notice of Application to the Department of Justice does not constitute service to the Privacy Commissioner.

For more information on serving documents, see the [Federal Courts Rules](#), which can be found on the Department of Justice Canada website.

What is involved in preparing an affidavit to support my application to the Federal Court?

An affidavit is a sworn statement made by an individual. The affidavit should state the complete facts of the applicant's case without making legal arguments or attempting to interpret the evidence. The Court will base

its findings and ultimate judgment on the evidence found in the parties' affidavits and exhibits filed with the Court (as well as any cross-examinations on the supporting affidavits).

The applicant's affidavit should outline, at minimum, the following information:

- The complete factual context of the alleged breach of PIPEDA by the respondent organization.
- Any relevant correspondence between the complainant and the respondent organization;
- The fact that the person brought a complaint to the Privacy Commissioner;
- The fact that the Privacy Commissioner issued a report;
- Along with the affidavit, the applicant should provide copies of any documentary evidence that is relevant to the hearing and will form part of the evidence to be reviewed by the Court. These documents should be attached to the affidavit and referred to as "exhibits" in the affidavit ; and
- If damages are sought as a remedy, the applicant is required to file appropriate evidence to support this claim.

Affidavits must be limited to facts within the personal knowledge of the individual swearing (or affirming) the affidavit (usually the applicant). An applicant may also wish to include one or more affidavits from other individuals where there are relevant facts outside the persona knowledge of the applicant.

Affidavits are required to include the signature of the person giving the information, the city the affidavit was signed in, and the date the document was signed. The affidavit must be signed in the presence of an authorized official, known as a Commissioner of Oaths, and the individual making the affidavit must make an oath or affirm the truth of the contents (see form 80A of the Federal Courts Rules). The Registry Office will have an official available to commission the affidavit.

What is the process for cross-examining on an affidavit?

Federal Courts Rule 83 provides the right to cross-examine on affidavits filed in support of an application. Each party may cross-examine the opposing side after their affidavits have been filed with the Court. The cross-examinations generally take place in a boardroom setting, under oath, and in the presence of a stenographer who will record the examination.

a. Applicant May Cross-examine the Respondent

The applicant should be prepared to cross-examine the respondent on its supporting affidavit if the applicant believes any of the information contained within the affidavit is untrue or inaccurate. In addition, cross-examination may cover any other matters relevant to the determination of the issues on the application.

b. Applicant May be Cross-examined by the Respondent

The applicant should also be prepared to be cross-examined by the respondent on his/her affidavit. The respondent will require the applicant to attend and answer questions in regard to "any matters relevant to the determination of the issues on the application or motion in respect of which the affidavit was filed."⁶ The applicant may refuse to answer questions that fall outside of those matters. Where there is a disagreement as to whether or not a question should be answered, it may be resolved by negotiation between the parties or by motion in front of a judge.

⁶ *Ibid.*, at 413.

c. Costs Related to Cross-examination

There are costs involved in the cross-examination process. The party that requests the cross-examination will be required to pay for the associated costs. These costs include:

- securing a location for the examination;
- hiring a stenographer to transcribe the questions and answers;
- hiring an interpreter if the party being examined does not speak English or French; and
- producing transcripts and copies and serving them on the opposing party.

What is a Memorandum of Fact and Law?

Under Federal Courts Rule 309(2)(h), a Memorandum of Fact and Law, often referred to as a *factum*, forms part of the Applicant's Record. The document must be served, as part the record, on the respondent and then filed with the Federal Court 20 days after the completion of cross-examination, or the time set out for the cross-examination.

The *factum* sets out the facts of the applicant's case, the legal arguments the applicant is making, and the authorities on which the applicant is relying. Rule 70 sets out the required contents of the *factum*:

"70. (1) A memorandum of fact and law shall contain, in consecutively numbered paragraphs,

1. a concise statement of fact, as Part I of the memorandum;
2. a statement of the points in issue, as Part II of the memorandum;
3. a concise statement of submissions, as Part III of the memorandum;
4. a concise statement of the order sought, including any order concerning costs, as Part IV of the memorandum;
5. a list of the authorities to be referred to, as Part V of the memorandum;
6. in a proceeding other than an appeal, the provisions of any statutes or regulations cited or relied on that have not been reproduced in another party's memorandum, as Appendix A to the memorandum; and
7. in a proceeding other than an appeal, a book of the authorities to be referred to that have not been included in another party's book of authorities, as Appendix B to the memorandum."⁷

Rule 70 also informs that any federal statutes or regulations included with the Memorandum of Fact and Law should be included in both official languages, and that the memorandum should not exceed 30 pages in length, excluding the appendices listed above.

Will the Privacy Commissioner forward the documentation from his investigation file to the Federal Court?

No. PIPEDA requires the Privacy Commissioner to keep his investigations confidential. Therefore, in order to uphold this general obligation, he has consistently objected to requests made by applicants under Federal

⁷ Rules for Regulating the Practice and Procedure in the Federal Court of Appeal and the Federal Court, SOR/98-106, Rule 70 [Federal Courts Rules].

Courts Rule 317 to transfer documentation held in his investigation file to the Federal Court, and the Court has maintained his objections.

Exceptionally, the Privacy Commissioner may disclose information in the course of a court hearing under paragraph 20(4)(c) of PIPEDA. Whether he does so remains at his sole discretion, and he cannot be compelled to produce this evidence.

This being said, individual complainants remain free to produce into evidence any portion of the investigation file that they may have received through correspondence with this Office.

What is involved in the hearing? What should I expect?

Generally, no witnesses are called at a section 14 hearing since the judge will already have the parties' affidavits and transcripts of cross-examinations on affidavits.

The applicant will speak first, outlining the facts of the case, the legal arguments he or she is making, and the orders sought from the court. The respondent will then have a chance to respond. The respondent's comments may be followed by a brief reply by the applicant on matters raised for the first time by the respondent.

The hearing generally takes between half a day to one day, and can take up to several days in rare circumstances.

Will I be informed of the Court's decision?

Typically, the judge does not render a decision immediately following the hearing. The Court will release its decision several weeks or months later, sending copies of the judgment to the parties by fax or through the mail. The Court can decide to allow or dismiss the application and may also award costs.

For information on costs, see Question 24(d).

Either party can decide to appeal the decision of the Federal Court to the Federal Court of Appeal if they are unsatisfied with the Court's ruling.

Are hearings held in English or in French?

Under the *Federal Courts Act*, the Court conducts itself in both official languages. At the request of the parties, the hearing can be held in French or in English, or partly in French and partly in English.

In order to have simultaneous translation of one language to another, Federal Courts Rule 31 allows the applicant to make a request, in writing, to the Court Administrator before the hearing begins to request an interpreter under the *Official Languages Act*. Similarly, under Rule 93, if the applicant has to be cross-examined on his or her affidavit, the party requesting the examination will have to arrange and pay for a translator to be present.

Where will the hearing be held?

The *Federal Courts Act* entitles the Court to sit at any place in Canada and hold hearings in various locations. Generally, the hearing is held in the city that is requested by the applicant, both in the Notice of Application and the Requisition for a Hearing. Otherwise, the respondent can contest the applicant's suggestion and request a hearing through other means, for example teleconferencing.

For the locations of Federal Court courtrooms and Registry Offices, see Question 25.

What are some practical considerations to take into account when deciding whether to bring a section 14 application under *PIPEDA*?

How often do cases go to Court?

Very few section complaints made under *PIPEDA* ultimately result in a decision being rendered by the Federal Court.

During the investigation phase, the Privacy Commissioner helps to settle a significant portion of cases amicably between the parties. Of those that complete the investigation phase, many are ultimately resolved when organizations agree to adopt and implement the Commissioner's recommendations. Few cases result in section 14 or section 15 applications being brought in Federal Court, and even fewer proceed to a hearing.

For example, between 2001 and 2005, there were 38 applications brought to the Federal Court under section 14 of *PIPEDA*. Only a handful of these applications resulted in judgments. Most applications are settled by the parties before or during the hearing, are abandoned by applicants, or are discontinued for various reasons.

What kind of time investment is involved in the process?

Section 17 of *PIPEDA* requires the Court to hear and determine applications under section 14 in a summary way, to make the process as expedient as possible. For various reasons, however, such as additional motions and objections, the time between when the application is originally filed with the Court and when the hearing takes place can take up to two years.

The process can also be time consuming for the parties involved. Bringing the application requires preparing the relevant documents (e.g. Notice of Application, affidavits, Memoranda of Fact and Law), filing the documentation with the court, cross-examining and being cross-examined on affidavits, as well as attending the hearing.

See the Federal Court's approximate timeline for Federal Court Procedures, "Applications other than immigration and refugee matters".

What will the application process cost?

There are various costs involved in the application process. Expenses can include, but are not limited to:

- lawyers' fees, where applicable;
- Federal Court filing fees (for example, there is a \$50 filing fee for the Notice of Application, and a \$50 filing fee for the Requisition for a Hearing Date);
- hiring a stenographer to transcribe cross-examinations;
- ordering transcripts;
- photocopying charges; and
- fees associated with mailing documents, or hiring a courier to deliver documents to the opposing party, where the applicant is unable to deliver them in person.

It is important to note that the Court has the discretion to order costs in favour of the successful party (i.e. a portion of the successful party's costs, including legal fees will be reimbursed by the opposing side). The current case law suggests that a cost award made in favour of a self-represented litigant may include disbursements and possible "opportunity costs" for lost time pursuing the applicant's interests (although not as compensation for lost revenue).⁸

However, applicants should also consider the possibility that they will have to pay the respondent's costs (i.e. its expenses including a portion of its legal fees) if their section 14 application is ultimately unsuccessful.

How is a section 14 application different from an application under section 18.1 of the Federal Courts Act?

Under section 18.1 of the *Federal Courts Act*,⁹ applicants can bring an application for judicial review which is different from a section 14 application under PIPEDA. Judicial review applications can be used to challenge the decision of the Commissioner, and the process used to arrive at the decision. These applications may be pursued only on very limited grounds, including if the applicant believes the Commissioner:

- refused to exercise his jurisdiction;
- acted without jurisdiction; or
- surpassed the boundaries of the jurisdiction outlined in PIPEDA.

Judicial review may also be available in other limited circumstances, for example, where the complainant feels that the Commissioner has breached his obligations of procedural fairness.

Where are the offices of the Federal Court currently located?

A list of [Federal Court Registry Offices](#) can be found on the Courts Administration Service website.

For more information and for sample documents, please refer to the [Federal Courts Rules](#) on the Justice Laws website.

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⁸ *Rahman v. Canada (Minister of Citizenship and Immigration)* (2002), 216 F.T.R. 263; *Entreprises A.B. Rimouski Inc. v. Canada* (2000), 262 N.R. 276 (Fed. C.A.).

⁹ *Federal Courts Act*, R.S. 1985, c. F-7[*Federal Courts Act*].