

**ALBERTA**  
**OFFICE OF THE INFORMATION AND PRIVACY**  
**COMMISSIONER**

**ORDER M2004-002**

June 20, 2005

**REGISTRAR OF MOTOR VEHICLE SERVICES**

**CHRISTAL CONSULTING INC.**  
**LEARY SEMENIUK INC.**

Review Numbers M0004 & M0005

**Office URL:** <http://www.oipc.ab.ca>

**Summary:** On May 1, 2004 the *Access to Motor Vehicle Information Regulation* (“AMVIR”) came into force. AMVIR sets out the criteria the Registrar of Motor Vehicle Services (the “Registrar”) must consider when deciding whether a person may be given access to personal driving and motor vehicle information.

Leary Semeniuk Inc. (“LSI”), sought access to motor vehicle information pursuant to section 2(1)(a) (ensuring accountability of motor vehicle owners) of AMVIR. Christal Consulting Inc. (“Christal”), applied for access in accordance with sections 2(1)(a), 2(1)(d) (compliance with a court order), 2(1)(j) (law enforcement) and 2(1)(m) (for the purposes of a court proceeding).

Christal was approved to obtain access pursuant to sections 2(1)(d) and 2(1)(p) (release by consent). LSI was granted access under section 2(1)(p). The Registrar’s letters to the Applicants did not specify the grounds on which access under the requested sections of AMVIR was denied.

At inquiry, the Registrar raised a preliminary argument that the Adjudicator was unable to review its decisions as they pertain to individual applicants and could only review the categories as set out in Notification 01/2004. The Adjudicator found that the Commissioner or his delegate was capable of reviewing the Registrar’s discretion as it relates to individual applicants.

The Adjudicator sent all other matters back to the Registrar for reconsideration.

**Statutes Cited: AB:** *Access to Motor Vehicle Information Regulation*, Alta. Reg. 140/2003, ss 2, 2(1),2(1)(a),2(1)(d),2(1)(e),2(1)(i),2(1)(j),2(1)(k),2(1)(m),2(1)(o),2(1)(p) 4,4(1)(b),4(3),5(2), *Freedom of Information and Protection of Privacy Act* R.S.A. 2000,c.F-25, ss.40(1)(v), 72(2)(a)-(c),74(3),74.2,74.2(2),74.3, 74.5, 74.7,74.7(2), 74.7(3). *Interpretation Act* R.S.A. 2000, c.I-8, ss. 28(1)(nn), *Traffic Safety Act* R.S.A. 2000, c. T-6,ss 8, 8(2),8(4).

**Authorities Cited:** *Blacks' Law Dictionary*, 7<sup>th</sup>. ed. (St. Paul: West Corp. 1999) at p.1162, *Fridman's Law of Agency* 5<sup>th</sup>. Ed. (London: Butterworths, 1983) at p.9, *Sullivan and Driedger on the Construction of Statutes*,4<sup>th</sup>. ed. (Toronto: Butterworths, 2002) at p.1.

**Cases Cited:** *City of Edmonton v. Alberta (Human Rights and Citizenship Commission)*, 2002 ABQB 1013, *Re: Firearms Reference* [2000] 1 S.C.R. 783, *Re: Rizzo and Rizzo Shoes Ltd.*[1998] 1 S.C.R. 27, *R. v. Clarke* [2005] S.C.J. No.4, *R. v. Kelly* [1992] 2 S.C.R. 170, *R. v. Sharpe* [2001] 1 S.C.R. 45, *Thomas v. Dartmouth (City) (sub. nom Thomas v. Social Assistance Appeal Board (Nova Scotia)*(1992),119 N.S.R. (2<sup>nd</sup>) 159.

**Orders Cited: AB:** 97-016, **B.C.:** Order 36-1995, 256-1998; **ONT:** P-416.

## I. BACKGROUND

[para 1] Section 8(2) of the *Traffic Safety Act*, R.S.A. 2000, c. T-6 (the “TSA”) provides that the Registrar of Motor Vehicle Services (the “Registrar”) shall only release personal driving and motor vehicle information in accordance with the regulations made under section 8(4) of the TSA. As drafted, Section 8(2) of the TSA is authority for the proposition that an applicant must fall within the criteria for release set out in the regulation so as to be able to receive information. This is in contrast to the *Freedom of Information and Protection of Privacy Act* (“FOIP”) which sets out a right of access to information subject only to limited and specific exceptions stated within that Act.

[para 2] On May 1, 2004, the *Access to Motor Vehicle Information Regulation* (“AMVIR”) came into force. AMVIR sets out the criteria that the Registrar must consider when deciding whether a person may be given access to personal driving and motor vehicle information. A review of the Registrar’s decision is provided by Part 6, Division 1.1 of the FOIP.

[para 3] The first of the two Applicants, Leary Semeniuk Inc. (“LSI”), described itself on the AMVIR access application form as an “insurance investigator” and sought access to motor vehicle information on March 30, 2004 pursuant to section 2(1)(a) (ensuring accountability of motor vehicle owners) of AMVIR. On April 6, 2004, Christal Consulting Inc. (“Christal”), described itself on the application form as a private

investigator and applied for access in accordance with section 2(1)(a), 2(1)(d) (compliance with a court order), 2(1)(j) (law enforcement), 2(1)(m) (for the purpose of a court proceeding), and 2(1)(p) (release by consent) of AMVIR.

[para 4] By letter dated April 25, 2004, the Registrar approved Christal to obtain access pursuant to sections 2(1)(d) and 2(1)(p) of AMVIR. LSI was also informed that it was granted access under section 2(1)(p), although it had only applied for access under section 2(1)(a). The letters to each Applicant did not specify the grounds on which access under the requested sections of AMVIR was denied.

[para 5] In accordance with section 4 of AMVIR, the Registrar issued Notification 01/2004, dated May 12, 2004 specifying the categories of persons and organizations that were granted or denied access to information. Private investigators and insurance investigators as categories were denied direct access under sections 2(1)(a), 2(1)(j), and 2(1)(m) of AMVIR. Subsequently, on October 12, 2004, the Registrar issued a document entitled "Access and Release of Motor Vehicle Information Policy" that set out the policy for accessing motor vehicle information.

[para 6] There are two Affected Parties in this inquiry. The Alberta Association of Private Investigators is incorporated under the *Societies Act*, R.S.A. c. S-14 and is active in the development and implementation of standards regarding the professional conduct of private investigators. Siemco Associates Inc. is a private investigator who filed for a review of the Registrar's decision pertaining to its application but was outside the limitation period prescribed by section 74.3 of the Act.

## II. PRELIMINARY ISSUE

### What is the scope of review under Division 1.1 of FOIP?

[para 7] For the purposes of this discussion I will set out the relevant legislative provisions:

Section 74.2 of FOIP reads:

74.2 Despite section 4(1)(1)(ii), if a person makes a request to the Registrar for access to personal driving and motor vehicle information and a notification is published in accordance with the regulations made under section 8 of the *Traffic Safety Act*, the Commissioner may review the Registrar's decision as set out in the notification.

Sections 2(1)(a) and 4 of AMVIR read:

- 2(1) The Registrar may, on request, release information,
- (a) on the Registrar's motor vehicle information system, collected and compiled for the purpose of identifying licensed operators and registered owners of motor vehicles to ensure responsibility and accountability for their

actions with respect to motor vehicles, only for that purpose or for a use consistent with that purpose,

- (j) only to a public body or a law enforcement agency in Canada to assist in an investigation
  - (i) undertaken with a view to a law enforcement proceeding, or
  - (ii) which a law enforcement proceeding is likely to result,
- (m) only to a person for use in or for the purposes of, a proceeding before a court or quasi-judicial body,
- (p) only if the individual the information is about has consented to its release in accordance with subsection (3).

4(1) Before releasing any information pursuant to a request under section 2, the Registrar must publish a notification

- (a) on the Registrar's website maintained on the Government of Alberta, Department of Government Services website,
- (b) of the category of information to be or not to be released by the Registrar and the person or category of persons to whom the Registrar is or is not to release the information,
- (c) that states that, on request by a person, information may or may not be released in accordance with clause (b) for the purposes set out in this Regulation, and
- (d) that includes the date of the publication and a statement that any person may, within 60 days after the date of publication under this subsection, ask the Commissioner to review the decision of the Registrar in accordance with Part 5, Division 1.1 of the *Freedom of Information and Protection of Privacy Act*.

(2) The Registrar may release information to a person who requested the information before the expiry of the 60 day period referred to in subsection (1)(d), if the Registrar was providing information to that person prior to May 1, 2004.

(3) On the issuance of the notification in accordance with subsection (1) notice is deemed to have been given for the current and any future releases of the category of information and of the person or category of persons to whom the information is released or not released, as described in the notification, for the purpose of notice under Part 5, Division 1.1 of the *Freedom of Information and Protection of Privacy Act*.

(4) On the coming into force of any amendments to section 2, a new notification must be issued in respect of any request for information pursuant to those amendments in accordance with subsection (1).

[para 8] The Registrar argued that Division 1.1 of FOIP and AMVIR do not allow me to review its decisions as they pertain to individual applicants. The Registrar refers to the wording in section 74.2 of FOIP which states that "the Commissioner may review the Registrar's decision as set out in the notification" as authority for the position that I may only review the information contained in the notification, which in the case of Notification 01/2004, is comprised solely of types of information and categories of persons eligible to receive motor vehicle information.

[para 9] Notification 01/2004 does not name persons who applied to receive motor vehicle information or the provisions under which the applications were made. There are

no reasons given why specific categories of persons were denied access under specific purposes set out in section 2 of AMVIR.

[para 10] In support of this interpretation the Registrar refers to section 4(1)(b) of AMVIR which allows it to publish a notification “of the category of information to be or not to be released by the Registrar and also the person or category of persons to whom the Registrar is or is not to release the information”. That the Registrar can publish decisions by category is further underlined by section 4(3) of AMVIR which states that notice is deemed to have been given for the current and any future release of information and of the person or category of persons to whom the information is released or not released. The Registrar submits that this is in line with an overall legislative scheme that envisages a group pre-approval process different from the individual application process inherent in FOIP.

[para 11] Having discussed the Registrar’s position, I shall now examine the legislative framework that makes up this review. The Supreme Court of Canada in *R. v. Sharpe* [2001] 1 S.C.R. 45 and more recently *R. v. Clarke* [2005] S.C.J No. 4 has cited with approval *Re Rizzo and Rizzo Shoes Ltd.* [1998] 1 S.C.R. 27, wherein that court declared its preference for the “modern principle” of statutory interpretation. This principle is set out in *Sullivan and Driedger on the Construction of Statutes* (Toronto, Ontario: Butterworths, 2002) at page 1 as:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament

[para 12] In AMVIR itself there are eight instances where discretion is conferred on the Registrar. Excluding the driver’s abstract provision in section 5(2), the only section that grants the Registrar discretion to release or withhold information is section 2(1), which enumerates the purposes for which information may be released.

[para 13] Under section 74.2(2) of FOIP, only an individual who believes their own personal driving information may be released as a result of the Registrar’s decision and the person who made the access request can trigger the review process. In accordance with section 74.5, the person requesting the review must be given an opportunity to make submissions to the Commissioner and is entitled to be represented by counsel or an agent.

[para 14] The Commissioner’s powers on completion of an inquiry at section 74.7(2) are similar in content to those powers available in inquiries under section 72(2)(a)-(c) of FOIP. Under section 74.7(2)(a), the Commissioner can require the release of personal driving information to the person who made the request, if it is determined that the Registrar is not authorized to refuse access “under the regulations made under section 8 of the *Traffic Safety Act*.” Similarly, under section 74.7(2)(b), the Commissioner can confirm the Registrar’s decision or require her to reconsider it where the Commissioner determines the Registrar is authorized to refuse access under the regulations. Finally, under section 74.7(2)(c), the Commissioner can require the Registrar to refuse access when the Commissioner determines the Registrar is required under the

regulations to refuse access. In these instances the reference to “regulations made under section 8 of the *Traffic Safety Act*” means AMVIR generally and by implication section 2(1) in particular, as that section solely determines the Registrar’s authority to release or withhold information. Additionally, section 74(3) provides an applicant with a right to make an application for judicial review after receipt of the Commissioner’s order.

[para 15] The Registrar expressed the view during its oral presentation that while it determines each individual application on its merits, my inquiry does not extend to a review of the Registrar’s discretion in this regard. When asked what consideration I should give to the Applicants’ evidence, the Registrar replied that I cannot consider those submissions as they relate to the Applicants themselves; I can only consider such evidence in a general manner if it impacts upon the categories set out in the notification.

[para 16] I do not agree for three reasons. Firstly, if this was the case it would mean that the Registrar’s discretion exercised with regard to individual applicants under section 2(1) of AMVIR would be final. It would render superfluous my order making authority found in section 74.7 of FOIP. In looking for “harmony” in accordance with the dicta from *R. v. Clarke*, I can assume that legislators do not enact superfluous or meaningless provisions. Regulations could have been drafted specifying which classes of users may obtain access and which cannot. This was not done. The Legislature opted for a discretionary decision under section 2(1) of AMVIR and a review by the Commissioner under Division 1.1 of FOIP. Therefore I must conclude that the intent of the Legislature was to have the Registrar consider each application on its own merit and to have the Commissioner review the Registrar’s decision on each application.

[para 17] Secondly, the Registrar’s interpretation appears contrary to the review provisions in Division 1.1, which, when examined as a whole and read in their ordinary sense, demonstrate a process where an individual applicant can initiate a review, make submissions and obtain a remedy.

[para 18] Finally, it is presumed that the provisions of legislation are meant to work together, both logically and coherently, as parts of a functioning whole. It is consistent with the overall context of the legislative scheme to interpret section 4 of AMVIR as the section which lists the requirements for publication of a notification. The deemed approval provision in section 4(3) of AMVIR cannot be interpreted as overriding my review powers found in section 74.7 of FOIP. Given the legislative context, I take the phrase in section 4(1)(b) “the person or persons to whom the Registrar is or is not to release information” as not in any way affecting the decision to be made under section 2, but as a statement of how decisions can be recorded in the notification.

[para 19] The provisions of section 4 regarding the category of information and the category of persons to whom the Registrar is or is not to release information relate to the notification only. Section 4 cannot form the grounds on which the Registrar’s decisions are based. The Registrar’s decision is triggered in section 2 of AMVIR when a request is made. Section 4 allows a notification to carry into the future but does not allow future decisions to be made solely on the basis of a previous notification.

[para 20] Thus the phrase “the Commissioner may review the Registrar’s decision as set out in the notification” when examined in its entire context must mean the discretionary decisions made by the Registrar in accordance with section 2(1). This is underlined by the order-making authority found in section 74.7 of FOIP wherein I can review an exercise of discretion and send it back for reconsideration. Accordingly, I can examine the exercise of the Registrar’s discretion as it pertains to the individual applicants.

[para 21] I have one final comment regarding this issue. During its submission the Registrar had referred me to portions of *Alberta Hansard*. As recognized by the Supreme Court in *Re: Firearms Reference* [2000]1 S.C.R. 783, such material may be quite properly considered as long as it is relevant and not assigned undue weight. In this instance, the materials provided added little clarification.

### III. ISSUES

[para 22] There are three issues to this inquiry:

- A. Did the Registrar properly apply section 2(1)(a) of the *Access to Motor Vehicle Information Regulation*?
- B. Did the Registrar properly apply section 2(1)(j) of the *Access to Motor Vehicle Information Regulation*?
- C. Did the Registrar properly apply section 2(1)(m) of the *Access to Motor Vehicle Information Regulation*?

### IV. DISCUSSION OF THE ISSUES

#### A. Did the Registrar properly apply section 2(1)(a) of the Access to Motor Vehicle Information Regulation?

[para 23] Section 2(1)(a) of AMVIR states:

2(1) The Registrar may, on request, release information,

(a) on the Registrar’s motor vehicle information system, collected and compiled for the purpose of identifying licensed operators and registered owners of motor vehicles to ensure responsibility and accountability for their actions with respect to motor vehicles, only for that purpose or for a use consistent with that purpose.

[para 24] Both Applicants applied for access under section 2(1)(a). Christal gave as its grounds for access that it required information for locating parties and witnesses to motor vehicle accidents on behalf of its clients. LSI stated generally that it required access to investigate insurance claims brought against its clients, as well as for other uses unrelated to motor vehicle claims.

[para 25] In April 2004, each Applicant received a reply from the Registrar. Neither party was given access under section 2(1)(a) as they requested. No reasons were given for the denial under section 2(1)(a). Instead, Christal was given access under sections 2(1)(d) and 2(1)(p) and LSI access under section 2(1)(p).

[para 26] On May 12, 2004, Notification 01/2004 was released by the Registrar. Under Section II "Categories of persons and/or organizations" the Registrar set out a list of organizations to which it had decided to release personal motor vehicle information pursuant to section 2(1)(a). Among those organizations given access were insurers, if the insured person's property was damaged in a vehicle accident; lawyers, provided an accident report was maintained on file; and accident towing companies, provided that an accident report was on file.

[para 27] Section II of Notification 01/2004 further stated that it was the Registrar's decision to deny direct access of personal motor vehicle information to categories of organizations which included private investigators, insurance investigators, accident and collision investigators, agents to the insurance industry and chartered accountants. No reasons were given in the notification for the denial.

[para 28] The Registrar's affidavit evidence itself states that while there is no formal policy with respect to how individual decisions are made, there is a procedure to be followed when dealing with individual applications.

[para 29] The Registrar further stated it relied on a policy called the "Third Party Model" as a justification for the release or denial of personal motor vehicle information. The policy documentation that was submitted by the Registrar was published on the Government Services website on October 12, 2004, after the decisions regarding the Applicants were made, although the Registrar states that this policy was in place at the time the decisions were made.

[para 30] The Registrar stated that this policy required that only an individual or entity that had the purpose as identified in section 2 of AMVIR would receive information directly from the Registrar. The policy states that third parties that might be retained to provide services on behalf the individual who "has the purpose" can only obtain this information by receiving it from the individual with the purpose, subject to certain requirements established by policy. The Registrar submits that in this instance, the Applicants provide a service to their clients, and it is the clients who have the purposes enumerated in AMVIR. In other words, the Applicants act as agents for their clients and it is only their clients that can fulfill the requirements in AMVIR. In support

of this contention, the Registrar refers to section 8 of the *Traffic Safety Act*, in particular section 8(2) which states:

Neither the Registrar nor any person acting on behalf of the Registrar or providing services under this Act shall release personal driving and motor vehicle information except to the *persons to whom and in the circumstances under which personal driving and motor vehicle information may be released in accordance with the regulations.*

[Emphasis added]

[para 31] To determine whether the Registrar has properly applied section 2(1)(a), I therefore have to determine what is meant by “persons to whom and in the circumstances under which... information may be released in accordance with the regulations.”

[para 32] “Person” is not defined in the legislative scheme that contains AMVIR. The definition of “person” under the *Interpretation Act* R.S.A. 2000, c. I-8 section 28 (1)(nn) “includes a corporation and the heirs, executors, administrators or other legal representatives of a person”. Madam Justice Greckol in *City of Edmonton v. Alberta (Human Rights and Citizenship Commission)*, 2002 ABQB 1013 stated that this definition is expansive and also inclusive.

[para 33] *Black’s Law Dictionary* (St. Paul, Minnesota, West Corp., 1999) at page 1162 defines “person” as: “an entity (such as a corporation) that is recognized by law as having the rights and obligations of a human being.” The editors further included this quotation from Salmond’s *Jurisprudence* which states:

So far as legal theory is concerned, a person is any being whom the law regards as capable of rights and duties. Any being that is so capable is a person, whether a human being or not, and no being that is not, and no being that is not so capable is a person, even though he be a man. Persons are the substances of which rights and duties are the attributes. It is only in this respect that persons possess judicial significance, and this is the exclusive point of view from which personality receives legal recognition.

[para 34] It is clear therefore that a “person” is a being capable of having rights and duties. Given its expansive and inclusive interpretation, it is a term that goes beyond a description of an individual or entity set grammatically in the first person.

[para 35] With regard to the Applicants, they not only have their own legal personality but may also act as agents. Agency has been defined in *Fridman’s Law of Agency* (London, Butterworth, 5<sup>th</sup> edition, 1983) at page 9 as:

...the relationship that exists between *two persons*, when one, called the agent, is considered in law to represent the other, called the principal, in such a way as to be able to affect the principal’s legal position in respect of strangers to that relationship by the making of contracts or the disposition of property.

[Emphasis added]

[para 36] Thus an agent not only has rights and duties itself, but is also capable of exercising its principal’s rights and duties. As stated in *R v. Kelly* [1992] 2 S.C.R. 170:

“In essence the agent acts to achieve the same results that would have been obtained if the principal had acted on his or her own account.” An agent, if so instructed, takes its purpose from the principal. From this standpoint an agent would appear to meet the definition of a “person” as it appears in section 8(2) of the TSA.

[para 37] Further, in reviewing the legislative scheme, there is nothing in section 8(2) of the TSA that places a restriction on the type of person to whom personal motor vehicle information may be released. If the purposes set out in the regulations are fulfilled then a person, whatever its occupational categorization, is entitled to access the information. In AMVIR itself, sections 2(1)(e) and (i) place limits that only a public body’s officers, employees or agents may undertake the purposes set out in those sections. In section 2(1)(k) single parties in the first person are “individuals”. “Persons” when they are specified in sections 2(1)(l), (m), (o), have no accompanying restriction on that term.

[para 38] There has also been an inconsistency in the Registrar’s position. While it has argued that the basis for denying access to the Applicants under the section applied for is that the client has the “purpose” not its agent, it has at the same time in Notification 01/2004 allowed direct access to information by insurers, lawyers and accident towing companies. In most instances, the relationship between such parties will be that of agency.

[para 39] In its oral submission, the Registrar explained that it had exercised its discretion to allow direct access to lawyers based on the professional duties incumbent upon that profession. As stated by Cory J. in *R. v. Kelly* the agency relationship is based on trust and is fiduciary in nature. The Registrar gave no reasons to the Applicants for its decision. However, the Registrar in allowing some agents direct access appears either to be giving a varying interpretation of “person” that on occasion includes some agents but not others, or it is distinguishing between agents based on what it perceives is the strength of the fiduciary duty owed to their clients.

[para 40] In any event, such an analysis goes beyond the purposes for release enumerated by section 2(1)(a) and, accordingly, the Registrar has incorrectly applied a narrow definition to “person” that has no basis in either the TSA or in AMVIR.

[para 41] As stated previously, the Registrar did not give reasons for its decisions. However, the Registrar’s affidavit evidence demonstrated that in arriving at its decisions, the Registrar interpreted AMVIR on the basis of the “third party model”. From the oral submission of the Registrar, it is evident that this policy also involved consideration of the general qualifications of private investigators as an occupational class, as opposed to an examination of the individual merits of each applicant.

[para 42] That the Registrar can make policy is not in dispute. However, the Registrar must follow the dictates of that policy as well as ensuring that the policy is consistent with legislative framework that underpins it. In this instance, both the

legislative framework and the Registrar's own policy directed that a person's application for access to information be considered on its own merits. In accordance with AMVIR, a determination of whether a person may obtain information is based on purposes stated within the regulation. The Registrar's policy also directed applications to be made on an individual basis. However, the Registrar took into consideration the qualifications of private investigators in general, to the exclusion of the individual merits of each Applicant. In so doing the Registrar has based its decisions on irrelevant considerations.

[para 43] I therefore make the following conclusions. Firstly, the Registrar applied a narrow and incorrect interpretation to the definition of "person" for which there is no basis in the legislative scheme. Secondly, although the Registrar has stated that each application was decided on its merits, there is no evidence to support this contention. Rather, as the Registrar stated, reliance was placed upon the "third party model" and applications were determined with reference to that policy and the categories derived from it were set out in Notification 01/2004.

[para 44] Since I cannot exercise my discretion in the place of the Registrar, I must return the decision to the Registrar for reconsideration. Section 74.7(2)(b) of FOIP is the mechanism by which I may return a decision, on the ground that the discretion has been improperly exercised.

### **B. Did the Registrar properly apply section 2(1)(j) of the *Access to Motor Vehicle Information Regulation*?**

[para 45] Only Christal applied under this section. The main argument raised by Christal is that in acting as a preliminary investigator under professional or regulator statutes, it is entitled to access to information under AMVIR as acting for a "law enforcement agency".

[para 46] Regarding this argument, it would appear that the applicability of section 2(1)(j) could only extend to private investigators in those instances where they conduct an investigation on behalf of a public body or law enforcement agency. Whether the private investigator has been granted such rights and duties can only be determined by reference to the legislation in question and to the terms of appointment under which the private investigator acts. It is those terms that will form the basis of whether the purpose in section 2(1)(j) is applicable.

[para 47] In considering the application of this section, the conclusions I arrived at regarding the Registrar's narrow and incorrect interpretation of the definition of "person" and the Registrar's reliance on the "third party model" have equal application in this instance. I therefore return the decision of the Registrar to the Registrar for reconsideration on the basis set out in paragraph 44.

### **C. Did the Registrar properly apply section 2(1)(m) of the *Access to Motor Vehicle Information Regulation*?**

[para 48] Only Christal applied under this section. Likewise, my conclusions as expressed regarding the interpretation of “person” and the “third party model” apply equally here and accordingly, I return the decision of the Registrar to her for reconsideration.

## **V. THE REQUIREMENT FOR WRITTEN REASONS**

[para 49] One final matter I must consider is whether in ordering a reconsideration of the Registrar’s decisions, I should further direct the Registrar to provide the Applicants with written reasons for its decisions. The Supreme Court of Canada in *Baker v. Canada (Minister of Citizenship & Immigration)* [1997] 2 S.C.R. 817 recognized that, in certain circumstances, the duty of procedural fairness will require the provision of a written explanation for a decision. This duty of procedural fairness is flexible and variable and dependent upon an appreciation of the context of the particular statute and the rights affected.

[para 50] I direct therefore that the Registrar not only reconsider the decisions, as I have set out, but also provide the Applicants with written reasons for its decisions. My authority for this requirement is found in section 74.7(3) of FOIP. In Order 97-016, a similar direction was given by relying on section 68(4) (now section 72(4)) of FOIP, a provision identical to 74.7(3).

[para 51] In making this determination and considering the extent of reasoning that should have been given to the Applicants, the comments of the Nova Supreme Court in *Thomas v. Dartmouth (City)(sub nom. Thomas v. Social Assistance Appeal Board (Nova Scotia)* (1992),119 N.S.R.(2d) 159 are particularly appropriate:

[T]he purpose of the regulations is to enable a person who has applied for redress and social assistance, to be able to understand the outcome without having to make further inquiries through lawyers or otherwise, as to how an Appeal Board came to a particular decision. This is not to suggest that people who comprise the Appeal Board...are obliged to go to great lengths or considerable detail to explain their reasons. But it does mean they are duty bound to express their response in such a way that they are unambiguous and clear to the person who has been turned down.

Here all Mr. Thomas would have seen was “MASA Policy 1.3.5”. That does not meet the requirements. Mr. Thomas was entitled to know how it was that the Social Assistance Appeal Board came to its decision and be given sufficient details on the form, or attached piece of paper, explaining to a reasonable informed reader how the Board related the fact to the issues in arriving at its conclusion.

## **VI. ORDER**

[para 52] I make this Order under section 74.7 of the Act.

[para 53] I order the Registrar to reconsider its decision to deny access to information to Christal Consulting Inc. under section 2(1)(a) of AMVIR.

[para 54] I order the Registrar to reconsider its decision to deny access to information to Christal Consulting under section 2(1)(j) of AMVIR.

[para 55] I order the Registrar to reconsider its decision to deny access to information to Christal Consulting Inc. under section 2(1)(m) of AMVIR.

[para 56] I order the Registrar to reconsider its decision to deny access to information to Leary Semeniuk Inc. under section 2(1)(a) of AMVIR.

[para 57] Pursuant to section 74.7(3) of the Act I require the Registrar to give the Applicants written reasons for their reconsidered decisions.

[para 58] I further order the Registrar to advise me of its decisions along with a copy of its written reasons within 50 days of receiving a copy of this Order.

Dave Bell  
Adjudicator