

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER P2005-001**

August 11, 2006

**DOCTOR DAVE COMPUTER REMEDIES INCORPORATED**

Review Number P0080

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

**Summary:** The Information and Privacy Commissioner found that Doctor Dave Computer Remedies Incorporated (the “Organization”) used and disclosed the Complainants’ *personal information* contrary to the Act. The Commissioner’s Order considers the application of numerous provisions of the Act, such as sections 1(a) and 4(3) (business contact information); sections 1(j), 18 and 21 (*personal employee information*); sections 17 and 20 (*personal information*); sections 7, 8 and 9 (consent) and sections 16 and 19 (limitations on use and disclosure).

**Statutes Cited:** *Personal Information Protection Act*, R.S.A. 2003, c. P-6.5, ss. 1(a), 1(e), 1(j), (k), 2, 3, 4(3)(d), 4(4), 6, 7, 8, 9, 11, 14, 15, 16, 17, 18, 19, 20, 21, 46(2), 49, 50, 51 and 52. Alberta Regulation 366/2003; *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000 c.F-25, s. 1(n).

**Authorities Cited:** AB: Orders 96-019, 97-004, 98-007, 98-010, 2000-031, 2001-001, F2002-011 and F2002-020.

**Case Cited:** *Castillo v. Castillo*, 2005 SCC 83.

## I. BACKGROUND

[para 1] Two individuals (the “Complainants”), who alleged that they were former employees of Doctor Dave Computer Remedies Incorporated, (the “Organization”), initiated complaints with my office under section 46(2) of the *Personal Information Protection Act*, R.S.A. 2003, c. P-6.5 (the “Act”).

[para 2] The Complainants complained about the post-employment collection, use and disclosure of their *personal information* by the Organization. The information collected includes the Complainants’ names, home and email addresses, and home phone numbers. The complaints about use concern the Organization’s use of the Complainants’ *personal information* to encourage its current employees to initiate legal action against the Complainants and to make unwanted contact with the Complainants. The complaints about disclosures concern disclosures to websites, employees of the Organization and to third parties. In support of their complaints, the Complainants provided documentary and electronic evidence consisting of copied emails, letters and photographs.

[para 3] Mediation, authorized under section 49 of the Act, failed and the matter proceeded to a private oral inquiry under section 50 of the Act. Prior to the private oral inquiry, the Complainants accepted that they had the initial burden of proof to establish that the Organization collected, used and disclosed their *personal information* in contravention of the Act. The Organization chose not to attend the inquiry and prior to the inquiry tendered a one-page submission, without evidence, arguing that as the Complainants are independent contractors, the Act does not apply in these circumstances. The Organization was consistently uncooperative at all stages leading to these proceedings.

## II. ISSUES

[para 4] The issues in this inquiry are:

1. Is there evidence to support the Complainants’ allegations that the Organization sent the Complainants’ email addresses and other personal information to websites? The technical issues are whether email sent by a person may be traced to the person through an Internet Service Provider’s address.
2. Did an “individual” initiate the complaint, as required by section 46(2) of the Act?
3. Do the complaints involve “business contact information”, as defined by section 1(a) of the Act? If yes, did the Organization collect, use or disclose “business contact information”, as provided by section 4(3) of the Act?

4. Do the complaints involve “personal employee information”, as defined by section 1(j) of the Act? If yes, did the Organization collect, use or disclose “personal employee information”, as provided by section 15, section 18 and section 21 of the Act?
5. Do the complaints involve “personal information”, as defined by section 1(k) of the Act?
6. If the complaints involve “personal information”, did the Organization have the authority to collect, use or disclose the personal information without consent, as provided by section 14, section 17 and section 20 of the Act?
7. If the Organization did not have the authority to collect, use and disclose personal information without consent, did the Organization have the Complainants’ consent to collect, use or disclose the personal information, as provided by section 7, section 8 and section 9 of the Act?
8. Did the Organization comply with the limitations on collection, use and disclosure of personal information, as set out in section 11, section 16 and section 19 of the Act?

### III. DISCUSSION OF THE ISSUES

#### **Preliminary issue: Burden of proof**

[para 5] Prior to my review of the stated issues, I addressed the question of burden of proof. Section 51 of the Act is the only section that addresses the burden of proof. However, section 51 of the Act applies to a review of a decision regarding the denial of access to *personal information* or to refuse information respecting the collection, use or disclosure of *personal information* about an individual. Section 51 of the Act reads:

51 At an inquiry into a decision under which an individual was refused  
(a) access to all or part of the personal information about the individual or a record relating to the information, or  
(b) information respecting the collection, use or disclosure of personal information about the individual, it is up to the organization to establish to the satisfaction of the Commissioner that the individual has no right of access to the personal information about the individual or no right to the information requested respecting the collection, use or disclosure of the personal information about the individual.

[para 6] The Act is silent as to where the burden of proof rests for an inquiry into a complaint about the collection, use and disclosure of *personal information*. Consequently, I sought and received an independent legal opinion on the issue of burden of proof.

[para 7] As a preliminary issue to this inquiry, I asked the Organization and the Complainants to provide me with written arguments as to whether or not the Complainants or the Organization has the initial burden of proof. I provided the parties with a copy of the independent legal opinion for their comment. The Organization did not respond. However, the Complainants' response accepted that, as they are initiating the complaint and alleging that the Organization collected, used or disclosed their personal information contrary to the Act, they have the initial burden of proof. The Complainants subscribed to the general principle that the party raising the issue has the burden of proving it.

[para 8] In reviewing the burden of proof, I also considered it useful to examine related decisions made under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, (FOIPP). In Order 97-004, the former Commissioner addressed the burden of proof issue and applied the following criteria:

- a) who raised the issue; and
- b) who is in the best position to meet the burden of proof.

This approach has been applied in subsequent FOIPP decisions: see: Orders 98-007, 98-010, 2000-031 and F2002-020. A complainant has to have some knowledge about what *personal information*, such as names, addresses and contact information, was collected, used or disclosed and the manner, such as having the *personal information* posted on a website, in which the *personal information* was collected, used and disclosed. Therefore, it makes sense that the initial burden of proof can, in most instances, be said to rest with the complainant. An organization then has the burden to show that it had authority under the Act to collect, use and disclose the *personal information*.

[para 9] I agreed with the Complainants' written acceptance of the initial burden of proof in this inquiry regarding the collection, use and disclosure of their *personal information* in contravention of the Act.

[para 10] The remainder of the inquiry was held as a private oral inquiry and the Organization, after making a one-page letter submission prior to the private oral inquiry, chose not to participate in the inquiry, thereby opting not to make additional submissions, respond to the submissions of the Complainants, ask questions or respond to questions that may have arisen during the inquiry.

[para 11] I note that my Office made an extraordinary number of attempts to contact the Organization by telephone, mail, email and personal service on the registered office, which turned out to be a mail drop address registered with Corporate Registry as the registered office. The multiple attempts at contact with the Organization are documented and supported by affidavit evidence, which my Office provided to the parties. The Organization, for the most part, chose to ignore this proceeding.

**ISSUE #1: Is there evidence to support the Complainants’ allegations that the Organization sent the Complainants’ email addresses and other personal information to websites? The technical issues are whether email sent by a person may be traced to the person through an Internet Service Provider’s address.**

[para 12] I listened to the arguments of the Complainants, based on their background with computers and experience working for the Organization, in support of the assertion that the disclosure of their names, email addresses, home addresses and telephone numbers can be logically, electronically and reasonably traced to the Organization.

[para 13] I do not personally possess expertise in the field of tracing electronic computer transmissions and postings. Therefore, prior to the inquiry, I notified the Organization and the Complainants that I was seeking the advice of an external and impartial expert (the “expert”) in the field of electronic internet transmissions to assist me.

[para 14] At the inquiry the Complainants agreed with the selection of the expert. The expert attended the segment of the inquiry that addressed tracing electronic transmissions and after listening to the submissions, asking questions and responding to questions, he left the inquiry to write up his findings. Soon after the inquiry the expert provided me with a written technical report regarding the reasonableness of tracing the electronic disclosures to the Organization.

[para 15] The technical report of the expert, which I shared with the parties, was based on facts gathered at the inquiry. The expert performed a detailed examination of all of the written, technical and electronic evidence provided in the submissions. The expert qualified the examination by acknowledging that it is difficult to make categorical findings with respect to computer technology as email headers can be forged, addresses can be spoofed and timestamps/raw data can be modified. I accepted the qualification made and incorporated it in my assessment.

[para 16] When I finished my assessment of the technical report, I found it to be a comprehensive analysis. Weighing the evidence provided and allowing for the combined experience and knowledge of the expert, I find that it is reasonable to conclude that the Organization disclosed the names, email addresses, mailing addresses and phone numbers of the Complainants and posted the information to websites. The Complainants accepted the findings of the report. The Organization did not provide any response.

**ISSUE #2: Did an “individual” initiate the complaint, as required by section 46(2) of the Act?**

[para 17] Section 46(2) of the Act reads:

46(2) An individual may initiate a complaint with respect to the issues referred to in section 36(2).

[para 18] The Organization briefly argued, in its one-page submission, that the Complainants are not individuals within the Act but are really corporations and as such they cannot initiate a complaint. The Organization failed to provide me with any evidence supporting the submission. The Complainants argued and provided documentary evidence that they are former employees of the Organization and not corporate entities. In support of their testimony regarding their individual and employment status, the Complainants provided documentary evidence including documents filed with the Canada Revenue Agency.

[para 19] For the purposes of section 46(2) of the Act, I must define what is meant by an individual. To assist me with the meaning of individual, I turned to the FOIPP decisions found in Orders 96-019, 2001-001 and F2002-011. As a result of my review of the Act and of the specified FOIPP Orders I find, for this Act, that the word “individual” means a single human being. Therefore, as corporations are not single human beings, they may not file a complaint as an individual under section 46(2) of the Act.

[para 20] I accept the testimony and evidence of the Complainants that in these circumstances they may be identified as individuals who were employed by the Organization. There is no evidence to lead me to believe that the Complainants are acting, or were acting when employed by the Organization, in any capacity other than as individuals under the Act. I therefore find that the Complainants are individuals who initiated complaints within the meaning of section 46(2) of the Act.

**ISSUE #3: Do the complaints involve “business contact information”, as defined by section 1(a) of the Act? If yes, did the Organization collect, use or disclose “business contact information”, as provided by section 4(3) of the Act?**

[para 21] *Business contact information* is defined in section 1(a) of the Act and the exception to the definition of *business contact information* is found in section 4(3)(d) of the Act. Sections 1(a) and 4(3)(d) of the Act read:

1 In this Act,  
(a) “business contact information” means an individual’s name, position name or title, business telephone number, business address, business e-mail, business fax number and other similar business information;...

4(3) This Act does not apply to the following:...  
(d) the collection, use or disclosure of business contact information if the collection, use or disclosure, as the case may be, is for the purposes of contacting an individual in that individual’s capacity as an employee or an official of an organization and for no other purpose;...

[para 22] The Organization, in its one-page submission argued, without supporting evidence, that the Complainants’ email addresses, phone numbers or home addresses are

primarily business contact information and therefore section 4(3) of the Act places the Complainants' *business contact information* outside of the jurisdiction of the Act. This means that I would therefore have no jurisdiction to review complaints about *business contact information*.

[para 23] The Complainants testified that the information collected, used and disclosed by the Organization is not their *business contact information*. The Complainants argued that *business contact information* only exists with respect to an organization when someone is an employee of the organization. Once a person is no longer an employee there is no longer *business contact information*.

[para 24] I find that the information does not fall within section 4(3)(d) of the Act as it has not been used or disclosed for the purposes of contacting these individuals in their capacity as an employee or official of an organization and for no other purpose (I deal with the issue of collection below). I accept the submission of the Complainants that the information at issue is not *business contact information* and that sections 1(a) and 4(3)(d) of the Act do not apply in these circumstances.

**ISSUE #4: Do the complaints involve “personal employee information”, as defined by section 1(j) of the Act? If yes, did the Organization collect, use or disclose “personal employee information”, as provided by section 15, section 18 and section 21 of the Act?**

[para 25] The discussion under this issue will refer to the definitions of “employee”, *personal employee information* and *personal information*, defined in the Act as follows:

1 In this Act,

...

(e) “employee” means an individual employed by an organization and includes an individual who performs a service for or in relation to or in connection with an organization

(i) as an apprentice, volunteer, participant or student, or

(ii) under a contract or an agency relationship with the organization;...

...

(j) “personal employee information” means, in respect of an individual who is an employee or a potential employee, personal information reasonably required by an organization that is collected, used or disclosed solely for the purposes of establishing, managing or terminating

(i) an employment relationship, or

(ii) a volunteer work relationship

between the organization and the individual, but does not include personal information about the individual that is unrelated to that relationship;...

(k) “personal information” means information about an identifiable individual;...

[para 26] In this discussion, I will be considering the complaints that concern the Complainants' names, email addresses, home addresses and home phone numbers. That particular information is *personal information* as defined by section 1(k), since it is information about identifiable individuals.

[para 27] I have already found that the Complainants were "employees" of the Organization.

[para 28] The evidence is that the Complainants were employees of the Organization before January 1, 2004, when the Act came into force. The evidence is also that the Complainants ceased to be employees of the Organization in January and July of 2004, respectively.

[para 29] I must first consider section 4(4) of the Act, which reads:

4(4) If an organization has under its control personal information about an individual that was acquired prior to January 1, 2004, that information, for the purposes of this Act,

(a) is deemed to have been collected pursuant to consent given by that individual,

(b) may be used and disclosed by the organization for the purposes for which the information was collected, and

(c) after the coming into force of this Act, is to be treated in the same manner as information collected under this Act.

[para 30] The *personal information* at issue is of the kind that the Organization would have had under its control as an employer, including the email addresses of the Complainants who did work from their residences. I find that the Organization had under its control the Complainants' *personal information* prior to January 1, 2004, as the Complainants had been employed by the Organization long before that time.

[para 31] Section 4(4)(a) of the Act deems the Complainants' *personal information* to have been collected with consent, and section 4(4)(c) says that, after the coming into force of the Act, that *personal information* is to be treated in the same manner as information collected under the Act.

[para 32] Since the Organization had collected the Complainants' *personal information* before January 1 2004, I do not have the authority to consider whether the collection of the Complainants' *personal information* meets the requirements for collection under the Act. Section 4(4) of the Act then makes it clear that subsequent use and disclosure of the *personal information* are the only matters I may consider under the Act in this case.

[para 33] I now turn to the matter of *personal employee information*, which is defined in section 1(j) of the Act.

[para 34] Section 1(j) says that, in respect of a person who is an employee or a potential employee, *personal information* is *personal employee information* if the following requirements are met:

- the *personal information* is collected, used or disclosed solely for the purposes of establishing, managing or terminating an employment relationship or a volunteer work relationship between the organization and the individual (section 3 of the Regulation under the Act says that “managing” includes “administering”), and
- the *personal information* is reasonably required by an organization.

[para 35] The last part of section 1(j) of the Act also says that *personal employee information* does not include personal information that is unrelated to the employment or volunteer work relationship. Thus, under this definition, only *personal information* that is related to the employee or volunteer work relationship is *personal employee information*.

[para 36] The issue is whether the *personal information* which is the subject of the complaint meets the requirements for *personal employee information*, as contained in the definition in section 1(j) and also under sections 18 and 21 of the Act, which are the provisions dealing with, respectively, the use and disclosure of *personal employee information*.

[para 37] The use complained of occurred when the Complainants were no longer employees; that is, when they were former employees of the Organization.

[para 38] The definition of *personal employee information* in section 1(j) of the Act specifically refers to “an individual who is an employee or a potential employee”. It does not refer to former employees of an organization. Furthermore, the words “establishing, managing or terminating” an employment or volunteer work relationship in section 1(j) make it clear that section 1(j) only applies to present employees and recruitment of employees.

[para 40] Section 18 of the Act says how *personal employee information* may be used. As I have found that the information at the relevant time was not *personal employee information* and as section 18 does not refer to former employees, section 18 does not apply. I will consider the use of the Complainants’ *personal information* under other provisions of the Act that deal with use of *personal information* as opposed to *personal employee information*.

[para 41] Unlike section 18 (respecting “use” of *personal employee information*), disclosure of *personal employee information* refers in section 21(1)(a) to an individual who “was an employee”. I understand those words to include former employees. The relevant part of section 21 reads:

- 21(1) Notwithstanding anything in this Act other than subsection (2), an organization may disclose personal employee information about an individual without the consent of the individual if
- (a) the individual is or was an employee of the organization, or

(b) the disclosure of the information is for the purpose of recruiting a potential employee.

[para 42] So section 1(j) of the Act says it is not *personal employee information* if an individual is no longer an employee. Yet section 21 of the Act refers to the disclosure of *personal employee information* of individuals who “were” employees. How do I resolve this discrepancy?

[para 43] Interpreting section 21 requires that I consider the “modern principle” of statutory interpretation, as enunciated in the most recent edition of *Sullivan and Driedger on the Construction of Statutes*, 4<sup>th</sup> Edition (Markham, Ontario: Butterworths Canada Ltd., 2002) at page 1:

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

[para 44] This approach to statutory interpretation has been repeatedly affirmed in numerous decisions of the Supreme Court of Canada, one of the more recent being *Castillo v. Castillo*, 2005 SCC 83.

[para 45] The words of section 21(1) are clear in referring to former employees.

[para 46] The scheme of the Act is that *personal information* of former employees is addressed only in the provision for disclosure of *personal employee information* under section 21. *Personal information* of former employees is not addressed in section 1(j) or in the provisions for collection and use of *personal employee information* under sections 15 and 18, respectively.

[para 47] I believe that the Legislature’s intent was that collection and use of the *personal information* of former employees would no longer be solely for the purposes of establishing, managing or terminating the employment or volunteer work relationship, as required by section 1(j). Therefore, those provisions do not apply to former employees. However, I believe that the Legislature envisioned situations that would require disclosure of *personal employee information* of former employees, such as to pay pensions or to provide other post-employment benefits, or for tax reasons, as examples. Therefore, the Legislature decided to dispose with rules respecting the collection and use of employee information after someone ceases to be an employee, but kept the disclosure of employee information of former employees under section 21 of the Act, provided that an organization met the requirements for disclosure of *personal employee information* under section 21(2).

[para 48] Since the Complainants are former employees of the Organization, as provided by section 21(1)(a) of the Act, I find that section 21 is applicable to the Organization’s disclosure of the Complainants’ *personal information*. I must now consider whether the Organization met the requirements under section 21(2) which would allow it to disclose this information.

[para 49] Section 21(2) reads:

21(2) An organization shall not disclose personal information about an individual under subsection (1) without the consent of the individual unless

(a) the disclosure is reasonable for the purposes for which the information is being disclosed,

(b) the information consists only of information that is related to the employment or volunteer work relationship of the individual, and

(c) in the case of an individual who is an employee of the organization, the organization has, before disclosing the information, provided the individual with reasonable notification that the information is going to be disclosed and of the purposes for which the information is going to be disclosed.

[para 50] Section 21(2) of the Act contains three requirements. The “and” at the end of section 21(2)(b) means that all the requirements of section 21(2) of the Act must be met, where applicable. If those requirements are met, an organization may disclose *personal employee information* without the consent of the individual.

[para 51] Reading the words of section 21(2) of the Act in their entire context, I find that “purposes” for disclosure referred to in section 21(2)(a) and (c) must be interpreted as purposes related to the employment or volunteer work relationship, as set out in section 21(2)(b).

[para 52] Interpreting section 21(2)(a) of the Act as allowing disclosure for purposes unrelated to the employment or volunteer work would defeat the purpose of the Act. In this case, for example, the purposes for disclosure were to encourage third parties and employees of the Organization to make unwanted contact with the Complainants, and to promote the taking of legal action against the Complainants. These purposes are unrelated to the employment relationship. If “purposes” are not confined to the employment relationship, disclosure for the purpose of promoting unwanted contact with a former employee or promoting the taking of legal action against former employees would be allowed.

[para 53] As the purposes for disclosure in this case were not related to the employment relationship, I find that the Organization did not meet the requirements of section 21(2)(a). Therefore, the Organization cannot use section 21(2) of the Act to justify disclosure. I will consider the disclosure of the Complainants’ *personal information* under the provisions of the Act that deal with disclosure of *personal information*, as opposed to *personal employee information*.

**ISSUE #5. Do the complaints involve “personal information”, as defined by section 1(k) of the Act?**

[para 54] Yes. In Issue # 4, I found that the complaints at issue involve the Complainants’ *personal information*, as defined in section 1(k) of the Act, and not the Complainants’ *personal employee information*, as defined in section 1(j) of the Act.

**ISSUE #6. If the complaints involve “personal information”, did the Organization have the authority to collect, use or disclose the personal information without consent, as provided by section 14, section 17 and section 20 of the Act?**

**Collection of *personal information* without consent**

[para 55] As discussed in Issue #4, I will not be considering the collection of *personal information* since the information was collected before January 2004, and the Act deems such information to have been properly collected.

**Use of *personal information* without consent**

[para 56] The use of *personal information* concerns the use of the Complainants’ home phone numbers, names, home and email addresses to encourage third parties and employees of the Organization to make unwanted contact with the Complainants and to advocate the taking of legal action against the Complainants. The Complainants testified that they did not consent to this use.

[para 57] This use of *personal information* is evidenced in emails, testimony and documents provided by the Complainants. The Complainants argued that the Organization also used their *personal information* to contact a banking institution with the hope of creating doubt regarding their credit rating. The Complainants testified that they did not consent to this use either.

[para 58] Section 17 of the Act addresses the use of *personal information* of an individual, without consent. The relevant part of section 17 reads:

17 An organization may use personal information about an individual without the consent of the individual but only if one or more of the following are applicable:...

[para 59] Section 17 of the Act goes on to list when an organization may, without consent, use an individual’s *personal information*. The Organization did not argue or provide evidence that any of these apply to these circumstances. I find that the Organization did not have the authority to use the Complainants’ *personal information*, as provided by section 17 of the Act. Therefore, the Organization cannot use section 17 of the Act to justify the use.

## **Disclosure of *personal information* without consent**

[para 60] The disclosure of personal information concerns the disclosure of the Complainant's home phone numbers, names, home and email addresses to third parties and employees of the Organization.

[para 61] The emails, testimony and documents provided by the Complainants show that the Organization disclosed their *personal information* to employees of the Organization and to third parties. The Complainants, through their testimony, provided evidence that they did not provide the Organization with any consent to disclose their *personal information* as described. The Organization gave no evidence that there was consent.

[para 62] Section 20 of the Act addresses the disclosure of *personal information* of an individual without consent. The relevant part of section 20 of the Act reads:

20 An organization may disclose personal information about an individual without the consent of the individual but only if one or more of the following are applicable:...

[para 63] Section 20 of the Act goes on to list when an organization may disclose an individual's *personal information* without consent. The Organization did not argue or provide evidence that section 20 of the Act applies to these circumstances.

[para 64] I find that the Organization did not have the authority to disclose the Complainants' *personal information*, as provided by section 20 of the Act. Therefore, the Organization cannot use section 20 of the Act to justify the disclosure.

**Issue #7. If the Organization did not have the authority to collect, use or disclose personal information without consent, did the Organization have the Complainants' consent to collect, use, or disclose the personal information, as provided by section 7, section 8 and section 9 of the Act?**

### **Collection of *personal information* with consent: Section 7.**

[para 65] As discussed in Issue #4, I will not be considering the collection of *personal information* since the information was collected before January 2004, and the Act deems such information to have been properly collected.

### **Use and disclosure of *personal information* with consent: Section 7.**

[para 66] Section 7(1)(c) and section 7(1)(d) of the Act address use and disclosure of *personal information*, respectively. Those provisions read:

7(1) Except where this Act provides otherwise, an organization shall not, with respect to personal information about an individual,...

- (c) use that information unless the individual consents to the use of that information, or
- d) disclose that information unless the individual consents to the disclosure of that information.

[para 67] I have accepted the Complainants' evidence that they did not consent to the use and disclosure of their *personal information*. Therefore, it is necessary to consider whether there was some form of deemed consent or notice as provided by section 8 of the Act.

### **Can it be said that there was some form of deemed consent or notice?: Section 8.**

[para 68] There is no evidence that the provision for deemed consent under section 8(2) of the Act applies, and there is no evidence that the Organization complied with the provision for notice under section 8(3) of the Act. Therefore, I find that section 8 of the Act did not authorize the Organization to use or disclose the Complainant's *personal information*, without consent.

### **Withdrawal or variation of consent: Section 9.**

[para 69] Section 9 of the Act addresses withdrawal or variation of consent. I have found that the Organization did not have the Complainants' consent to use or disclose their *personal information*. Therefore, there is no need to consider the Complainants' withdrawal of consent under section 9.

### **Conclusion**

[para 70] I find that the Organization breached section 7 of the Act by using and disclosing the Complainants' *personal information*, without consent.

**Issue #8. Did the Organization comply with the limitations on collection, use and disclosure of personal information, as set out in section 11, section 16 and section 19 of the Act?**

**Limitations on collection**

[para 71] As discussed in Issue #4, I will not be considering the collection of *personal information* since the information was collected before January 2004, and the Act deems such information to have been properly collected.

**Limitations on use**

[para 72] Section 16 of the Act reads:

*16(1) An organization may use personal information only for purposes that are reasonable.*

*(2) Where an organization uses personal information, it may do so only to the extent that is reasonable for meeting the purposes for which the information is used.*

[para 73] Section 16 allows an organization to use *personal information* only for “reasonable” purposes. The “reasonable” requirement also governs the extent that an organization may use *personal information* for meeting the purposes for which the *personal information* is used.

[para 74] The standard as to what is “reasonable” is set out in section 2 of the Act, which reads:

*2 Where in this Act anything or any matter*

*(a) is described, characterized or referred to as reasonable or unreasonable, or*

*(b) is required or directed to be carried out or otherwise dealt with reasonably or in a reasonable manner,*

*the standard to be applied under this Act in determining whether the thing or matter is reasonable or unreasonable, or has been carried out or otherwise dealt with reasonably or in a reasonable manner, is what a reasonable person would consider appropriate in the circumstances.*

[para 75] When deciding under section 16(1) of the Act whether an organization had a “reasonable” purpose for using *personal information*, the standard is what a reasonable person would consider appropriate in the circumstances. Similarly, when deciding under section 16(2) whether an organization used *personal information* only to the extent that is

“reasonable” for meeting the purposes for which the information is used, the standard is also what a reasonable person would consider appropriate in the circumstances.

[para 76] I have found that the Organization’s purpose for using the Complainants’ *personal information* was to encourage third parties and employees of the Organization to make unwanted contact with the Complainants, and to promote the taking of legal action against the Complainants. In these circumstances, a reasonable person would consider that use to be inappropriate. Therefore, I find that the Organization’s purpose for using the Complainants’ *personal information* was not reasonable, as provided by section 16(1). Having made this finding, I also find that a reasonable person would consider the extent of the use to be inappropriate. Therefore, I further find that the extent of the use was not reasonable, as provided by section 16(2).

[para 77] Consequently, I find that the Organization did not comply with the limitations on use of the Complainants’ *personal information*, as set out in section 16 of the Act. Therefore, the Organization’s use of the Complainants’ *personal information* was in breach of section 16 of the Act.

### **Limitations on disclosure**

[para 78] Section 19 of the Act deals with disclosure of *personal information* and contains the same wording as section 16 of the Act. For the same reasons that I found the use of the *personal information* by the Organization to be unreasonable, I find that the Organization’s purpose for disclosing the Complainants’ *personal information* and the extent of the disclosure were not reasonable. Therefore, the Organization’s disclosure of the Complainants’ *personal information* was in breach of section 19 of the Act.

### **Complainants’ observation**

[para 79] I note that the Complainants touched upon an issue not formally represented in the issues of this Inquiry. The Complainants argued that the Organization failed to develop and follow privacy policies and practices required under section 6 of the Act. Section 6 of the Act reads:

Policies and practices

6 An organization must

(a) develop and follow policies and practices that are reasonable for the organization to meet its obligations under this Act, and

(b) make information about the policies and practices referred to in clause (a) available on request.

[para 80] As the issue of compliance with section 6 of the Act was not an issue that was formally raised, I will not make a finding. However, I remind the Organization that it is required to comply with the Act in its entirety, including the policy and practice requirements specified in section 6 of the Act.

[para 81] I also note that many of the concerns raised by the Complainants involve issues that cannot be addressed under this Act.

#### **IV. ORDER**

[para 82] I make the following Order under section 52 of the Act.

[para 83] I find, by way of preliminary issue, that the Complainants have the initial burden of proof for a complaint about the collection, use and disclosure of their *personal information* contrary to the Act.

[para 84] I find that there was evidence to support the Complainants' allegations that the Organization sent the Complainants' email addresses and other *personal information* to websites.

[para 85] I find that the Complainants are individuals who initiated complaints as required by section 46(2) of the Act.

[para 86] I find that the complaints do not involve *business contact information* as defined in section 1(a) of the Act.

[para 87] I find that the complaints do not involve *personal employee information* as defined in section 1(j) of the Act. Although the disclosure of the Complainants' *personal information* falls within section 21 of the Act, the disclosures do not meet the requirements of section 21(2) of the Act.

[para 88] I find that the complaints involve *personal information* as defined by section 1(k) of the Act.

[para 89] I find that the Organization did not have the authority to use or disclose the Complainants' *personal information*, as provided by sections 17 and 20 of the Act. Therefore, the Organization required the Complainants' consent to use or disclose their *personal information*.

[para 90] I find that the Organization did not have the consent of the Complainants to use or disclose their *personal information*, as provided by sections 7 and 8 of the Act. Therefore, the Organization breached section 7 of the Act by using and disclosing the Complainants' *personal information* without consent.

[para 91] I find that the Organization did not comply with the limitations on use and disclosure of the Complainants' *personal information*, as set out in section 16 and section 19 of the Act, respectively. Therefore, the Organization's use and disclosure for the

Complainants' *personal information* was in breach of section 16 and section 19 of the Act, respectively.

[para 92] As a result of my finding that the Organization has been in contravention of the Act, I hereby order that the Organization immediately cease using and disclosing the *personal information* of the Complainants.

Frank Work, Q.C.  
Information and Privacy Commissioner