

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDERS P2009-013 and P2009-014

June 16, 2010

**MURPHY INDUSTRIAL OILFIELD INC.
AND BROOKLYN OILFIELD SERVICES INC.**

Case File Numbers P0960 and P0961

Office URL: www.oipc.ab.ca

Summary: The Complainant complained that two Organizations posted posters of him around town, in contravention of the *Personal Information Protection Act*. The posters consisted of an enlargement of the Complainant's driver's licence photograph and a caption suggesting that he was a danger to children. The RCMP concluded that the posters were a hoax and that the Complainant posed no danger to children.

The Adjudicator found that the photograph on the posters was taken from a copy of the same driver's licence that the Complainant had provided to the Organizations when he commenced employment with them. The Adjudicator found that both Organizations were responsible for the Complainant's personal information, under section 5 of the Act, because both Organizations were employers of the Complainant, both had custody and/or control of his personal information, and individuals performing services for both Organizations dealt with the Complainant.

The Adjudicator also found that, on a balance of probabilities, the Organizations posted the posters, as the Complainant had recently provided a copy of his driver's licence to them, and the posters appeared during an ongoing acrimonious dispute between the Organizations and the Complainant. The Organizations suggested various other sources of the posters, but the Adjudicator dismissed those possibilities as unlikely.

The Adjudicator concluded that, by posting the posters, the Organizations used and disclosed the Complainant's personal information in contravention of the Act. The Complainant obviously did not consent to that use and disclosure under section 7 or 8; the information could obviously not be posted without the Complainant's consent under section 8, 17, 18, 20 or 21; and the use and disclosure of the driver's licence photograph on the posters was obviously not for a reasonable purpose under sections 16 and 19. Finally, by disclosing the inaccurate statement about the Complainant being a danger to children, the Organizations contravened section 33 of the Act.

The Adjudicator found that the Organizations did not use or disclose the Complainant's driver's licence photograph in other ways, such as in the ordinary course of business, as the Complainant only worked for the Organizations for one day, and none of the parties established that other uses and disclosures occurred.

The Adjudicator found that the Organizations did not make reasonable security arrangements to protect the Complainant's personal information, under section 34 of the Act, as the copy of his driver's licence was kept in an unlocked filing cabinet accessible to the office landlord and the spouses of employees.

The Adjudicator ordered the Organizations to stop using and disclosing the Complainant's personal information in contravention of the Act. He also required the Organizations to perform their duty to protect the Complainant's personal information.

Statutes Cited: **AB:** *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 1(j) [now 1(1)(j)], 1(k) [now 1(1)(k)], 5, 5(1), 5(2), 5(3), 6(a) [now 6(1)], 6(b) [now 6(3)], 7, 8, 8(2), 10, 13, 16, 16(1), 16(2), 17, 18, 19, 19(1), 19(2), 20, 21, 33, 34, 52, 52(3)(a), 52(3)(e) and 52(4); *Personal Information Protection Amendment Act, 2009*, S.A. 2009, c. 50; *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, s. 38.

Authorities Cited: **AB:** Orders F2002-014, F2007-001, F2009-023, P2005-001, P2006-008, P2007-011 and P2008-007. **CAN:** *F.H. v. McDougall*, [2008] 3 S.C.R. 41.

I. BACKGROUND

[para 1] On February 27, 2008, in Edson, Alberta, the Complainant was hired as a driver for Murphy Industrial Oilfield Inc. ("Murphy Inc.") and/or Brooklyn Oilfield Services Inc. ("Brooklyn Inc."). At that time, he supplied his driver's licence and a copy of it was made.

[para 2] After only one day of work on February 29, 2008, the Complainant quit. The parties were then involved in a dispute over the payment of wages. The dispute was investigated by the Employment Standards section of Alberta Employment Immigration and Industry ("Alberta Employment Standards"). Following an agreement arranged by Alberta Employment Standards, wages were paid to the Complainant. A cheque was sent to Alberta Employment Standards on April 3, 2008, and Alberta Employment Standards sent it to the Complainant on April 14, 2008.

[para 3] On April 9, 2008, the Complainant discovered posters of himself on telephone poles in Edson. The posters consisted of an enlargement of his driver's licence photograph with the caption "Beware Keep An Eye On Your Children". The Royal Canadian Mounted Police (the "RCMP") had earlier been alerted to the same poster by a member of the public on April 7, 2008, and had commenced an investigation. Ten posters were initially found and removed by the RCMP. The RCMP determined that the posters first appeared as early as April 4 or 5, 2008, at the Edson Post Office and Edson Friendship Centre. More posters were discovered between approximately April 14 and 20, 2008. The RCMP concluded that the posters had been posted maliciously, but it had insufficient evidence to lay any criminal charges. The RCMP issued a news release to advise the public that the Complainant posed no threat.

[para 4] In correspondence dated April 14, 2008 and received by this Office on April 21, 2008, the Complainant alleged that Murphy Inc. and Brooklyn Inc. (the "Organizations") were responsible for the appearance of the posters and had contravened the *Personal Information Protection Act* (the "Act" or "PIPA"). Case file number P0960 was opened to address the complaint against Murphy Inc., and case file number P0961 was opened to address the complaint against Brooklyn Inc.

[para 5] Mediation of the matters was authorized but was not successful. The matters were therefore set down for a joint written inquiry. During the inquiry, the Organizations were both represented by the same individual. He identifies himself as the Chief Executive Officer of both Organizations, so I will refer to him in this Order as the "CEO". As explained later in this Order, there is another common employee of the two Organizations. She identifies herself as an office administrator in a letter included with the submissions of the parties, so I will refer to her as the "Office Administrator".

[para 6] A corporate search indicates that the CEO is the sole director of Murphy Inc. Another corporate search indicates that he is not a director of Brooklyn Inc., but that Murphy Inc. is a voting shareholder of Brooklyn Inc. The sole director of Brooklyn Inc., as set out as such in the corporate search, did not participate in this inquiry, as Brooklyn Inc. was represented by the CEO. I will occasionally refer to the "Director of Brooklyn Inc." in this Order.

[para 7] The Complainant provided initial and rebuttal submissions. The Organizations provided separate initial submissions and a joint rebuttal submission. After reviewing the parties' written submissions, I determined that an oral hearing was warranted and one was therefore held on April 21, 2010. I invited the parties to provide any additional submissions or evidence in advance of the oral hearing, if they wished, but none of them did.

[para 8] With his initial submissions, the Complainant provided records that he had obtained from the RCMP, which were partly severed. By letter dated September 1, 2009 and received by this Office on September 24, 2009, he noted that the RCMP may have additional evidence pertaining to the issues in the inquiry, such as statements made by the CEO, which the RCMP did not provide to him. I found it unnecessary to request

information from the RCMP, as the parties gave their accounts directly to me during this inquiry, both in their written submissions and at the oral hearing.

[para 9] On May 1, 2010, amendments to PIPA came into force by virtue of the *Personal Information Protection Amendment Act, 2009*. However, because the Organizations' alleged contraventions of the Act occurred prior to the amendments, the legislation applies as it existed previously. For the purpose of cross-reference, I note below when there has been an amendment to a section of PIPA that I discuss in the Order.

II. INFORMATION AT ISSUE

[para 10] The information that the Organizations allegedly used and/or disclosed in contravention of PIPA, and allegedly failed to protect through reasonable security arrangements, is the Complainant's photograph from his driver's licence. His inaccurate personal information contained in a statement appearing on the posters is also at issue.

[para 11] Because the Complainant's complaint to the Commissioner was only in relation to the appearance of the posters, the foregoing is the only information strictly at issue in this inquiry. However, because the Complainant's photograph was allegedly taken from his driver's licence – which makes the use and disclosure of the driver's licence itself relevant – I will sometimes refer more generally to the driver's licence and not merely the photograph on it.

III. ISSUES

[para 12] Together, the Notice of Inquiry, issued June 26, 2009, and the Notice of Oral Hearing, issued December 3, 2009, set out six issues. I have combined and rephrased two of them (those relating to sections 16 and 19 of PIPA) as well as placed the issues in a different sequence for the purpose of discussion in this Order. I have also opted to discuss, under a separate heading, the question of whether the Organizations used and/or disclosed the Complainant's personal information and/or personal employee information in the first place. The issues will accordingly be discussed as follows:

Are both of the Organizations, or only one of them, responsible for the Complainant's personal information and for ensuring compliance with the Act under section 5 of PIPA?

Did the Organizations use and/or disclose the Complainant's personal information and/or personal employee information?

If the Organizations used and/or disclosed the Complainant's personal information and/or personal employee information, did they do so in compliance with sections 7, 8, 10, 17, 18, 20 or 21 of PIPA?

If the Organizations used and/or disclosed the Complainant's personal information, did they do so for a reasonable purpose and to a reasonable extent, in compliance with sections 16 and 19 of PIPA?

Did the Organizations disclose accurate personal information about the Complainant, in compliance with section 33 of PIPA?

Did the Organizations make reasonable security arrangements to protect the Complainant's personal information, in compliance with section 34 of PIPA?

[para 13] In his written submissions, the Complainant raises a question regarding the Organizations' compliance with section 13 of PIPA, which required them to notify him as to the purposes for which his personal information was being collected. However, I will not directly review the collection of any of the Complainant's personal information in this inquiry, as his complaint was only in relation to the posters. The appearance of the Complainant's personal information on the posters may be characterized as a use and/or disclosure, but not a collection. Having said this, I will indirectly discuss the collection of the Complainant's driver's licence in determining whether, at that time, he consented to, or received proper notice regarding, particular uses and/or disclosures of his driver's licence by the Organizations.

[para 14] In his written submissions, the Complainant also alleges that the Organizations failed to develop and follow policies and practices that are reasonable for them to meet their obligations under PIPA under section 6(a) [the equivalent is section 6(1) as of May 1, 2010], and failed to make information about those policies and practices available under section 6(b) [the equivalent is section 6(3) as of May 1, 2010]. He also alleges that they did not designate an individual to be responsible for ensuring compliance with PIPA under section 5(3). I will not address these issues, as they were not raised by the Complainant in his initial complaint to this Office.

IV. DISCUSSION OF ISSUES

A. Are both of the Organizations, or only one of them, responsible for the Complainant's personal information and for ensuring compliance with the Act under section 5 of PIPA?

[para 15] Section 5 of PIPA reads as follows:

5(1) An organization is responsible for personal information that is in its custody or under its control.

(2) For the purposes of this Act, where an organization engages the services of a person, whether as an agent, by contract or otherwise, the organization is, with respect to those services, responsible for that person's compliance with this Act.

...

(5) In meeting its responsibilities under this Act, an organization must act in a reasonable manner.

(6) Nothing in subsection (2) is to be construed so as to relieve any person from that person's responsibilities or obligations under this Act.

[para 16] Section 5(1) states that an organization is responsible for “personal information” that is in its custody or under its control. Section 1(k) [renumbered section 1(1)(k) as of May 1, 2010] defines “personal information” as “information about an identifiable individual”. As the Complainant’s photograph from his driver’s licence is information about him as an identifiable individual, it is his personal information.

[para 17] I added the issue under section 5 to the inquiry because the parties disagree about which Organization was the Complainant’s employer. The Complainant states that he was employed by both Organizations whereas the Organizations state that he was employed by Brooklyn Inc. only. This dispute raised the question of whether both, or only one, of the Organizations were responsible for the Complainant’s personal information, and for ensuring that their employees and agents complied with the Act.

1. Were both Organizations the Complainant’s employer?

[para 18] The parties do not dispute that the Complainant was employed by Brooklyn Inc., and I find that he was. On his first and only day of work, he was accompanied by the Director of Brooklyn Inc., drove a truck belonging to Brooklyn Inc., and Brooklyn Inc. is apparently the Organization that invoiced the particular client.

[para 19] As for whether Brooklyn Inc. was the *only* employer of the Complainant, the Complainant says that he was also an employee of Murphy Inc. The Complainant was interviewed and hired by the CEO, who the Complainant submits was acting on behalf of both Organizations. He says that he understood at the time that he would be employed by both Organizations. The Complainant adds that he subsequently attended a site in Edson that is the joint office of both Organizations, where he was met by the CEO as well as the Office Administrator acting as the secretary and office coordinator of both Organizations. He notes that his complaint to Alberta Employment Standards was against both Organizations, and Murphy Inc. made no objection at the time. He further points out that the payment of his wages was made by a cheque in the name of Murphy Inc.

[para 20] The Complainant submitted copies of daily journal entries from February 26 to March 2, 2008, in which he sets out his understanding that he was employed by both Murphy Inc. and Brooklyn Inc. The Organizations dispute the authenticity of those journal entries, saying that they were created some time after the fact rather than at the time that the events occurred. I have not relied, anyhow, on the journal entries in reaching my conclusions below. I have relied on other evidence.

[para 21] Murphy Inc. submits that the Complainant was not hired by any individual acting on its behalf. The CEO testified that he interviewed the Complainant at a particular restaurant, but that this was on behalf of the Director of Brooklyn Inc., who was not available at the time. The CEO explained that the interview was for the purpose of hiring the Complainant as an employee of Brooklyn Inc., not Murphy Inc. The CEO testified that he phoned the Director of Brooklyn Inc., who advised him to go ahead and hire the Complainant. The CEO explained that the Complainant was not hired as an employee of Murphy Inc., given that Murphy Inc. does not seek drivers with Class 1 licences and does not transport fluids, which were part of the job requirements and duties in this case. The CEO testified that the Director of Brooklyn Inc. is the one who reviewed the Complainant's résumé and trained the Complainant on his first day of the job. The CEO added that he himself only "funded" Brooklyn Inc. and had nothing to do with its day to day operations.

[para 22] With its submissions, Brooklyn Inc. included an unsigned copy of a document entitled "Terms of Employment" with the name of Brooklyn Inc. at the top, which it says was the agreement to be signed by the Complainant. The Complainant testified that he did not sign that document, and the Organizations do not dispute this. I find that the "Terms of Employment" document does not establish that only Brooklyn Inc. was the Complainant's employer, as the Complainant did not sign it, he could also be an employee of Murphy Inc. even if he did sign it, and there is other evidence suggesting that Murphy Inc. was, in fact, also the Complainant's employer.

[para 23] The Complainant says that he answered a job advertisement posted at the Employment Centre in Edson. He did not make or retain a copy at the time, so was unable to provide one. When cross-examined by the Complainant, the CEO testified that he himself did not post a job advertisement for Murphy Inc. at the Employment Centre, but was "unsure" whether someone else may have. He said that he "shouldn't say no" but he did not "believe" that an advertisement for employment with Murphy Inc. was posted and that "to the best of [his] knowledge" no such advertisement was placed. I find it surprising that, as the sole director of Murphy Inc., and apparently having only one administrative employee (the Office Administrator), the CEO could not definitively say whether or not a job advertisement had been posted by Murphy Inc.

[para 24] Later during the oral hearing, the CEO tendered, as an exhibit, an alleged copy of the job advertisement to which the Complainant responded. The CEO arranged for the Office Administrator to fax the job advertisement to him during the oral hearing. He stated that he spoke to the Office Administrator during a break, and that she told him that the exhibit was a copy of the exact advertisement that the Director for Brooklyn Inc. recited for her to type up. On reviewing the exhibit, the Complainant testified that it was not the same advertisement that was on a card that he saw thumb-tacked to the bulletin board at the Employment Centre, and said that the exhibit submitted by the CEO was created "out of convenience".

[para 25] I do not need to determine the authenticity of the job advertisement that was tendered as an exhibit. As with the "Terms of Employment" document, the job

advertisement provided at the oral hearing, even if the one actually posted, does not conclusively determine that Brooklyn Inc. was the only employer of the Complainant. The Complainant could have responded to that advertisement, but then gone on to be employed by both Organizations.

[para 26] Murphy Inc. submitted a particular letter written by the Complainant on March 3, 2008, in which the Complainant says that he was hired as a driver with Brooklyn Inc. to operate a vehicle owned by that company, and resigned from that company. The Complainant explains that, of the two Organizations, Brooklyn Inc. was the relevant employer for the purpose of the letter, as it was a demand for payment directed to the client for whom he drove on his only day of work, and that day of work involved driving a truck owned by Brooklyn Inc. I find that the letter written by the Complainant does not establish that Brooklyn Inc. was his only employer. Again, he could have been employed by both Organizations, but happened to perform services for Brooklyn Inc. on his single day of work. The Complainant presents a plausible explanation that Brooklyn Inc. was the relevant employer for the purpose of his demand for payment from the particular client.

[para 27] Following the Complainant's complaint to Alberta Employment Standards, the payment of his wages was made by cheque, dated March 31, 2008, in the name of Murphy Inc. In the submissions of Brooklyn Inc., there is a letter of April 3, 2008, with which the cheque was enclosed. It was sent from the Office Administrator, who signed on behalf of Murphy Inc. and stated that "this cheque was cut as per our normal business policy." I take the "our" to refer to Murphy Inc.

[para 28] The CEO testified that, after the Complainant made his claim for wages to Alberta Employment Standards, an employee of that department recommended, in a telephone conversation with the CEO, that the Complainant be paid. The CEO testified that he chose to send the money in order to get the Complainant "out of our life". As for why the wages were paid using a cheque in the name of Murphy Inc., if Murphy Inc. was not one of the Complainant's employers, the CEO explained that this was a cheque that happened to be in his pocket at the time of the conversation with Alberta Employment Standards. He argued that the cheque was the only connection between the Complainant and Murphy Inc., and that the cheque is irrelevant because it would have later been posted as a credit due from Brooklyn Inc. to Murphy Inc.

[para 29] The CEO was not credible in his explanation of why Murphy Inc. paid the Complainant's wages, if Murphy Inc. was not the Complainant's employer. He testified that he received the telephone call from the employee of Alberta Employment Standards while watching his daughter's dance rehearsal and, in order to deal with the matter right away, he paid the wages using a cheque that was in his pocket. He stated: "I put the cheque in an envelope, put a stamp on it and I mailed it to her". However, when asked about the above-mentioned April 3, 2008 letter from the Office Administrator to Alberta Employment Standards, with which the cheque was actually enclosed, the CEO altered his version of events and said that he "may have sent the cheque to her [the Office Administrator], to the office first" and that the Office

Administrator then forwarded it on to Alberta Employment Standards. He phoned the Office Administrator during a break in the oral hearing and she apparently confirmed that the latter was what happened.

[para 30] I find it odd that the CEO recalled sending the cheque himself to Alberta Employment Standards when it was, in fact, sent by the Office Administrator. I also find it odd that, in the context of the dispute with the Complainant over the payment of wages, the CEO chose to “immediately” send a Murphy Inc. cheque that was in his pocket, during a short break in his daughter’s dance rehearsal, rather than arrange for a Brooklyn Inc. cheque to be sent at a later date. He explained that he is “not always available”, implying that he deals with matters when he has the opportunity to do so, rather than later. However, the wage dispute had been going on for approximately one month, and there is no suggestion that payment of the Complainant’s wages suddenly became urgent.

[para 31] On review of all of the documentation provided to me, I find that the clear evidence showing that the Complainant’s wages were paid by Murphy Inc. outweighs the other evidence, which is either inconclusive or the authenticity of which is in dispute. Further, on consideration of the testimony of the Complainant and the CEO at the oral hearing, I found the Complainant more credible and preferred his version of events, according to which the understanding between all parties was that he was employed by both Organizations.

[para 32] I conclude that the Complainant was employed by Murphy Inc., in addition to Brooklyn Inc.

2. Did both Organizations have custody and/or control of the Complainant’s personal information under section 5(1) of PIPA?

[para 33] Under section 5(1) of PIPA, an organization is responsible for personal information if the personal information is in its custody *or* under its control; it is not necessary for there to be both custody *and* control. Here, I find that the Complainant’s personal information on his driver’s licence was in the custody and/or control of both Organizations.

[para 34] Brooklyn Inc. does not dispute that it was the Complainant’s employer and that it collected and retained a copy of the driver’s licence for employment purposes. It therefore had custody and control of it. As I have found that Murphy Inc. was also the Complainant’s employer, it also had custody and control of the copy of the driver’s licence that was provided by the Complainant for employment purposes.

[para 35] I point out that, even if Murphy Inc. was *not* an employer of the Complainant, that Organization nonetheless had custody, if not also control, of a copy of the driver’s licence. “Custody” refers to the physical possession of a record (Order F2002-014 at para. 12). While a recent Order of this Office noted that “bare” possession of information does not amount to custody, there is custody if there is some

right or obligation to hold the information in one's possession (Order F2009-023 at para. 33). Here, a copy of the Complainant's driver's licence was kept at an office that was used jointly by Murphy Inc. and Brooklyn Inc. At the oral hearing, the CEO confirmed that the Office Administrator is responsible for maintaining the files of both Organizations, which are kept in a filing cabinet in her particular office. As she is employed by Murphy Inc., had possession of the copy of the Complainant's driver's licence in her office, and was responsible for keeping it there, Murphy Inc. had a right and obligation to possess the copy of the Complainant's driver's licence, even if Murphy Inc. was not itself the Complainant's employer.

[para 36] Because both Organizations had custody and/or control of the Complainant's personal information, both Organizations are responsible for it under section 5(1) of PIPA. This is regardless of whether both Organizations or only Brooklyn Inc. was the Complainant's employer.

3. Were both Organizations responsible for ensuring compliance with PIPA under section 5(2)?

[para 37] There is no question that Murphy Inc. is responsible for the CEO's and the Office Administrator's compliance with PIPA under section 5(2). The CEO is the Director of Murphy Inc., and the Office Administrator is that of Murphy Inc., as shown on correspondence included with the Organizations' submissions.

[para 38] As for whether Brooklyn Inc. is also responsible for the CEO's and the Office Administrator's compliance with the Act, the CEO wrote and testified that he is the CEO of both Organizations. Regardless of the position he occupied, he clearly acted as an agent of Brooklyn Inc. (in addition to Murphy Inc.) with respect to the Complainant's employment, as he interviewed and hired the Complainant, as well as subsequently met with him to complete employment-related paperwork at the office in Edson.

[para 39] At the oral hearing, the CEO confirmed that the Office Administrator is the office administrator of both Organizations. I further note that, during the oral hearing, the Office Administrator faxed to the CEO a copy of the job advertisement allegedly posted by Brooklyn Inc., showing that she works for that Organization. In any event, the Office Administrator clearly acted as an agent for Brooklyn Inc. (in addition to Murphy Inc.) when she collected a copy of the Complainant's driver's licence and carried out other administrative and personnel functions in relation to his employment.

[para 40] The foregoing tells me that the CEO and the Office Administrator act for both Organizations. Even if they are not themselves employed or paid by Brooklyn Inc., that Organization is still responsible for their compliance with the Act. This is because section 5(2) states that, where an organization engages the services of a person – whether as an agent, by contract or otherwise – the organization is, with respect to those services, responsible for that person's compliance with this Act. Here, even if

the CEO and Office Administrator are not employees of Brooklyn Inc., Brooklyn Inc. engaged their services in relation to the Complainant's employment.

[para 41] I conclude that both Organizations were responsible for ensuring the CEO's and the Office Administrator's compliance with the Act. Finally, I also find that both Organizations were responsible for ensuring the Director of Brooklyn Inc.'s compliance with the Act. He clearly acted for Brooklyn Inc., given that he is the Director. He also performed services for Murphy Inc., given that he met with and trained the Complainant on his first day of work. As I have found both Organizations to be the Complainant's employer, the Director of Brooklyn Inc. acted for both Organizations in his dealings relating to the Complainant's employment.

4. Conclusion regarding responsibility for the Complainant's personal information

[para 42] I conclude that both Organizations were responsible for the Complainant's personal information and for ensuring compliance with PIPA. As explained above, I do so for three different but overlapping reasons: both Organizations were the employers of the Complainant; both Organizations had custody and/or control of the Complainant's personal information; and the CEO, Office Administrator and Director of Brooklyn Inc. (and possibly other employees or agents acting for both Organizations) were performing services for both Organizations in their dealings with the Complainant.

[para 43] For the remainder of this Order, I will refer to the Organizations collectively (i.e., jointly and severally) unless the context requires otherwise.

[para 44] The Organizations say that they have ceased or are ceasing operations. In order to determine the status of the Organizations and any possible effect on their capacity to be parties to this inquiry, I asked the Registrar of Inquiries to conduct corporation searches on December 1, 2009. The results, which were provided to the parties, showed both Organizations to be "active". Even if they had ceased to be active, or cease to be active in the future, they were nonetheless active at the time of their alleged contraventions of PIPA. Another corporate search conducted on April 19, 2010, just prior to the oral hearing, again showed both Organizations to be active.

B. Did the Organizations use and/or disclose the Complainant's personal information and/or personal employee information?

[para 45] In this inquiry, the Complainant has alleged an improper use and/or disclosure of his personal information. The initial burden of proof rests with the Complainant, in that he has to have some knowledge, and adduce some evidence, regarding what personal information was used and/or disclosed, and the manner in which the personal information was used and/or disclosed; the Organizations then have the burden to show that their use and/or disclosure of the Complainant's personal information was in accordance with the Act (Order P2005-001 at para. 8; Order P2006-008 at para. 11).

[para 46] I explained above that the Complainant's photograph from his driver's licence was his "personal information" under section 1(k) of PIPA [renumbered section 1(1)(k) as of May 1, 2010]. As for whether it is also his "personal employee information", that term was defined, at the time of the Organizations' alleged contraventions of PIPA, as follows under section 1(j) [which was amended and renumbered section 1(1)(j) as of May 1, 2010]:

"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;

[para 47] The Complainant was an employee of both Organizations and he supplied his driver's licence for the purpose of carrying out functions as a driver for them. The personal information on his drivers licence was reasonably required for the purpose of establishing and managing the employment relationship. The information on the driver's licence, copied and collected by the Organizations, was therefore the Complainant's personal employee information, in addition to his personal information.

[para 48] In his complaint to the Commissioner, the only specific use and/or disclosure alleged by the Complainant was that someone acting for the Organizations placed his driver's licence photograph and a statement about him on posters in Edson in April 2008. However, in the course of the inquiry, various other possible uses and/or disclosures of the Complainant's driver's licence were suggested, which may have given rise, directly or indirectly, to the appearance of the posters, or were otherwise not in compliance with PIPA. I will therefore also determine whether these other uses and/or disclosures occurred.

1. Disclosure of the driver's licence to an insurance company

[para 49] In its submissions, Brooklyn Inc. stated: "We did NOT at any time, give a copy of his [the Complainant's] driver's licence to our insurance company." Murphy Inc. did not suggest that it disclosed the driver's licence to an insurance company. The Complainant submitted that he was told by the Office Administrator, when providing her with his driver's licence so that a copy could be made, that the Organizations' insurance company required a copy to be kept on his personnel file.

[para 50] I find that the Complainant's driver's licence was not disclosed to an insurance company. Brooklyn Inc. is certain that it was not so disclosed. As the Office

Administrator of both Organizations is the individual who would have supplied a copy of the driver's licence to an insurance company, I take Brooklyn Inc.'s certainty to mean that Murphy Inc. is likewise certain that it did not provide a copy of the driver's licence to an insurance company. Finally, the Complainant's understanding was that a copy of the licence would simply be kept on file.

2. Placement of the driver's licence in client information binders

[para 51] The Organizations referred to the placement of employees' driver's licences in client information binders. According to the CEO, the Organizations prepare these binders for the purpose of advertisement and promotion, and they contain, or used to contain, copies of the driver's licences of all drivers. It was also suggested that these client information binders are sometimes found or kept in a well-house used by the Organizations, which is accessible to the employees of other companies, and even the general public.

[para 52] However, in its written submissions, Brooklyn Inc. stated that "considering that [the Complainant] had only worked for us for one day, his information was absolutely NEVER added to our standard client information binder." At the oral hearing, the CEO testified that it was very unlikely that a copy of the Complainant's driver's licence was placed in client information binders, as the Office Administrator normally prepares a set of 20 to 30 binders at one time, which is a considerable amount of work that likely did not occur in the short time the Complainant was employed. The CEO said that he was "99.9%" sure that no client information binders containing the Complainant's driver's licence were created.

[para 53] For his part, the Complainant does not believe that a copy of his driver's licence was placed in any client information binders. He says that this possibility was raised by the CEO, during an interview with the RCMP, in order to deflect the possibility that the CEO posted the posters himself.

[para 54] I find that the Complainant's driver's licence was not placed in any client information binders, and therefore not used or disclosed in that way. This is due to the very short time that the Complainant worked for the Organizations, the time that it takes to prepare the client information binders, and the Organizations' level of certainty that the Complainant's driver's licence was not placed in client information binders. Further, the Complainant has the initial burden of adducing evidence regarding the use and disclosure of his personal information, and he himself does not think that a copy of his driver's licence was actually placed in any client information binders.

3. Placement of the driver's licence in truck binders

[para 55] The Organizations indicated that they place copies of the driver's licences of employees in binders that are kept in the trucks driven by those employees, in case the employees forget to carry the originals of their driver's licences with them.

[para 56] However, in the Organizations' joint rebuttal submissions, they stated: "The fact that [the Complainant] only worked the 1 day and had never handed in his employment form would indicate that his information would never had [sic] entered our truck binders, where we keep copies of this information on each driver." The CEO repeated, during the oral hearing, that binders are prepared after an employee's contract is returned, which did not happen here. The Complainant did not say that he believed that a copy of his driver's licence was placed in any truck binders.

[para 57] As the Organizations were the parties that raised the possibility of placing the Complainant's driver's licence in truck binders, but they do not believe that this was actually done due to the Complainant's short term of work and failure to return his employee documents, I find that the Complainant's driver's licence was not used or disclosed in any truck binders.

4. Disclosure of the driver's licence to a particular client

[para 58] In its written submissions, Brooklyn Inc. stated that "it is possible that we supplied a copy of it [the Complainant's driver's licence] to the contractor we were working for at the time, which was [name of the individual and his company]". In this Order, I will refer to this individual who may have received a copy of the driver's licence as the "Client". (The term "contractor" is confusing, as the Client was not the contactor of Brooklyn Inc.; rather, Brooklyn Inc. was the subcontractor of the Client.)

[para 59] The written submissions of Brooklyn Inc. suggested merely the possibility of a disclosure of the driver's licence to the Client. The Complainant did not himself raise that possibility. As the Complainant only worked one day for one client, there is no suggestion that a copy of his driver's licence was sent to any other client.

[para 60] At the oral hearing, the CEO said that he spoke to the Office Administrator and the Director of Brooklyn Inc., and that neither knows whether a copy of the driver's licence was, in fact, sent to the Client. The CEO testified that, in the normal course of business, copies of driver's licences might be faxed to clients in order to assure them of a driver's qualifications, but that depends on whether and when the client requests a copy. According to him, such a disclosure does not necessarily occur prior to commencing the work for the client, as it might also occur a few days after the start of the work. Further, whether and when such a disclosure occurs depends on the distance to the job site, as the further that it is away, the more time and money that is lost if a driver forgets his licence, the client has received no copy, and the client insists that the driver return home or elsewhere to retrieve his driver's licence.

[para 61] Given the CEO's explanation of the factors that influence whether and when a copy of an employee's driver's licence might be disclosed to a client, I find that a copy of the Complainant's driver's licence was not disclosed to the Client in this case. The Complainant worked for the Client only one day and the distance to the job site was relatively short (Edson to Hinton). Further, it is the Organizations who raised the possibility of a disclosure to the Client, and they were in a position to establish that such

a disclosure occurred, either by reviewing all available records in their possession or contacting the Client. The fact that nobody within the Organizations could definitively say whether a copy of the Complainant's driver's licence was sent to the Client tells me that it was not.

5. Placement of the driver's licence photograph and statement on the posters

[para 62] The Complainant believes that his driver's licence photograph and the statement about him were placed on the posters in Edson in April 2008 by someone acting for the Organizations. Through their written submissions and the testimony of the CEO at the oral hearing, the Organizations deny posting the posters. The CEO testified that he asked employees of the Organizations and they all said that they had nothing to do with the posters. The Organizations raise various other possibilities of who was responsible for the posters, which I review below.

[para 63] The Complainant's driver's licence was renewed on October 5, 2007, and he provided a copy of it to the Organizations on February 27, 2008. The Complainant submitted a certified copy of his renewed driver's licence and a copy of the poster taken from the RCMP file. At the oral hearing, he confirmed that a new photograph was taken when he renewed his driver's licence on October 5, 2007 (which I understand to be the normal procedure when a driver's licence is renewed). I find that the image on the poster is the same as that on the driver's licence and therefore originated from it. I note that the RCMP reached the same conclusion, according to a record of the RCMP submitted by the Complainant.

[para 64] Because the driver's licence was issued October 5, 2007 with a new photograph, the posters that appeared in April 2008 were posted by someone having access to the driver's licence, or a copy of it, after October 5, 2007.

(a) Persons with access to the Complainant's driver's licence prior to his employment with the Organizations

[para 65] The Complainant submitted that, in the period between the renewal of his driver's licence in October 2007 and the appearance of the posters in April 2008, he supplied his driver's licence to only one other individual or entity, which was an employer with offices in Red Deer, Alberta and a job site in Cold Lake, Alberta. I will refer to this employer as the "Red Deer/Cold Lake Employer". At the oral hearing, the Complainant testified that he worked for the Red Deer/Cold Lake Employer in December 2007 and January 2008. He said that he was not actually sure whether his driver's licence was copied by the Red Deer/Cold Lake Employer, but that this would be the only other possible time that his driver's licence photograph could have been copied by someone. He said that he left the Red Deer/Cold Lake Employer on good terms and that no one acting on its behalf had a motive for posting the posters. He testified that he has lived alone since October 2007, and that no other individual, such as a relative,

acquaintance or visitor, has had access to his driver's licence or a reason to post the posters.

[para 66] The CEO challenged the credibility of the Complainant at the oral hearing, alleging that the Complainant is routinely involved in disputes with employers over safety and training matters, and that the possibility that the posters were posted by someone acting for the Red Deer/Cold Lake Employer, or any other employer, cannot be ruled out. In the submissions of one of the Organizations, the CEO wrote that his lawyer told him that the Complainant had harassed or made complaints against other businesses, including in Edson.

[para 67] In response, the Complainant testified that he had no acrimonious relationships with any other employer other than the Organizations. I did not entirely believe the Complainant when he said this, as the CEO set out the details of a particular dispute that the Complainant had with an employer in 2003. However, as that dispute predated the renewal of the Complainant's driver's licence and the appearance of the posters by a number of years, I exclude this particular employer from being responsible for the posters. I also do not believe that any other businesses or organizations in and around Edson were responsible for the posters, as suggested by the CEO based on what his lawyer told him, as I have insufficient grounds to believe so. I consider the CEO to be merely speculating based on something he heard from somebody else.

[para 68] Further, I exclude the possibility that the Red Deer/Cold Lake Employer, or someone acting on its behalf, posted the posters. The Complainant stopped working for the Red Deer/Cold Lake Employer in January 2008. I find it very unlikely that someone from Red Deer or Cold Lake, who might have had access to the Complainant's driver's licence or a copy of it, posted the posters in Edson, a town some distance away, three months later. I note that the Complainant rode with another employee of the Red Deer/Cold Lake Employer from Edson to the job site in Cold Lake, but he says that he only ever saw that employee that one day. There is no suggestion that this other employee of the Red Deer/Cold Lake Employer, who presumably also lives in or near Edson where the posters appeared, was responsible for the posters.

[para 69] The CEO noted that range patrol officers and cleaning staff have access to the rooms of individuals at the Cold Lake job site, and submitted that one of these officers or cleaning staff may have taken the Complainant's driver's licence and made a copy. The Complainant admitted that he sometimes leaves his driver's licence unattended in his room at job sites, although he also said that he hides it under his mattress. The possibility was also raised that a roommate of the Complainant at Cold Lake took the driver's licence on some occasion. The Complainant responded that, because he is so careful about his personal information, he keeps his driver's licence with him at all times when he has a roommate (including taking it into the shower).

[para 70] I find it very improbable that a roommate, range patrol officer or member of the cleaning staff at the Cold Lake job site took the Complainant's driver's licence in December 2007 or January 2008, made a copy and returned it, and then proceeded to post

the posters about the Complainant in Edson three to four months later. I cannot help but think that the Organizations are “grasping at straws” when they suggest these possibilities.

[para 71] The CEO noted that the Complainant’s driver’s licence had a Pincher Creek address. When asked why this was so, the Complainant explained that he uses the mailing address of his former wife because he travels from Edson to work for long periods of time, and prefers that sensitive documents (such as passports, licences, tax information, speeding tickets, bank information, etc.) go to Pincher Creek rather than Edson. He explained that his daughter and former wife live in Pincher Creek and that his former wife, with whom he is on good terms, accesses his mail in Pincher Creek on his behalf. The CEO challenged the credibility of the Complainant, on the basis that he has lived in Edson for several years and therefore the use of the Pincher Creek address on a government document is an improper misrepresentation. The CEO also raised the possibility that the Complainant’s former wife, who would have picked up the Complainant’s renewed driver’s licence in October 2007, was responsible for the posters. Alternatively, the CEO suggested that the posters were posted by someone having access to the driver’s licence in the home of the Complainant’s former wife, prior to the Complainant obtaining it from her.

[para 72] I accept the Complainant’s explanation for using the Pincher Creek address on his driver’s licence. Further, I find it unlikely that the Complainant’s former wife, or anyone else who possibly had access to the Complainant’s driver’s licence in Pincher Creek in October 2007, posted the posters in Edson six months later. The Complainant did not recall the envelope containing his driver’s licence being tampered with when he obtained it from his former wife, and I believe him when he says that his former wife, and various other individuals living in Pincher Creek or elsewhere, had no cause to post the posters about him.

(b) Persons with access to the Complainant’s driver’s licence after his employment with the Organizations

[para 73] The timing and location of the posters suggests that they were posted by a person having a motive to do so, and who was proximate to Edson, in April 2008. The Complainant thinks that the CEO and Office Administrator posted the posters, as he believes that only they had access to the copy of his driver’s licence made by the Organizations. When the Complainant asked the CEO whether only he and the Office Administrator had access to the driver’s licence, the CEO was at first evasive, then changed the subject to one about the Complainant’s responsibility to hand in employee documentation, and finally said that the office landlord also had access to the Organizations’ office. The CEO added that he “supposes” that his wife and the Office Administrator’s “significant other” also have keys.

[para 74] None of the parties suggested that the landlord, spouse of the CEO or spouse of the Office Administrator posted the posters. I find that none of these individuals did. Likewise, none of the parties suggested, and I do not find, that a member

of the general public had access to the copy of the Complainant's driver's licence at the office of the Organizations and therefore could have posted the posters.

[para 75] The Organizations submitted copies of online postings made in April 2008, which disparaged the business practices of the Organizations (specifically mentioning the CEO and the Director of Brooklyn Inc.) as well as two other companies and their owners. The Organizations say that these were authored by the Complainant using a pseudonym. One of these disparaged companies was that of the Client discussed above, to whom the Complainant had sent a demand for payment for the one day of work during which he drove for one of the Organizations under contract with the Client's company. I therefore considered whether the Client, or any other client, was responsible for the posters. However, because I found earlier that none of the clients of the Organizations were given a copy of the Complainant's driver's licence, I also find that no client posted the posters. Even if I am wrong and the one particular Client did receive a copy of the Complainant's driver's licence, none of the parties believe that he was responsible for the posters.

[para 76] It is clear, in my view, that the company of the other third party, which was also allegedly disparaged by the Complainant online, was not responsible for the posters. This is because none of the parties raise any possibility that this company or its owner obtained a copy of the driver's licence in the first place.

[para 77] The Organizations' main theory is that the Complainant posted the posters himself. At the oral hearing, the CEO testified that the Complainant is mentally unstable, has multiple personalities, and posted the posters to seek attention. The Complainant denies posting the posters.

[para 78] I find that the Complainant did not post the posters himself, as the posters suggested that the Complainant was a risk to children. It would be very unusual for an individual to attempt to attract attention in this way, as the suggestion of being a risk to children is very inflammatory, and could possibly cause personal and professional harm. It could also give rise, as it did in this case, to a police investigation into whether the suggestion was true. Despite the Organizations' theory, I have no evidence that the Complainant is the type of individual who would post the posters that appeared about him.

[para 79] In the Organizations' submissions, the CEO wrote that he has never seen the posters and is not exactly sure what the details were surrounding their content. He wrote that he and the Director of Brooklyn Inc. were each interviewed by the RCMP and cleared of any involvement in the incident. I also note that Brooklyn Inc. submitted an e-mail, dated April 11, 2008, from the CEO to the Office Administrator, in which the CEO wrote:

This saga is never ending. Apparently he [the Complainant] called or went to the RCMP with a complaint about a poster that said warning don't hire this man or or [sic] something like that. Constable S... from

Edson RCMP called me at 4:09 pm April 10th, 2008 from [phone number]. He left a message to call him back or to talk to Corporal O.... I called him back and he told me about this complaint and apparently the poster had a picture of his drivers license on it. [...]

[para 80] The above e-mail suggests that the CEO became aware of the posters for the first time on April 10, 2008, which is after the posters first appeared, according to records of the RCMP. When asked at the oral hearing whether he posted the posters, the CEO testified that he did not.

[para 81] Because PIPA applies to organizations, I do not have to determine whether the CEO, or any other particular individual acting on behalf of the Organizations, posted the posters. Rather, I have to determine whether the Organizations used and/or disclosed the Complainant's driver's licence photograph, and the statement about him, by placing them on the posters. I explain this further, in the next part of this Order, at which point I also return to the contents of the above e-mail.

(c) Conclusion regarding the use and disclosure of the Complainant's personal information on the posters

[para 82] Given the seriousness of the allegations surrounding the posters, the conflicting evidence of the Complainant and the Organizations, and the challenges regarding the credibility of the parties, I think it is important to set out the standard that applies in my determination of whether the Organizations posted the posters. Because this is a civil proceeding, it is the standard of proof on a balance of probabilities, which was explained as follows by Rothstein J., of the Supreme Court of Canada, in *F.H. v. McDougall*, [2008] 3 S.C.R. 41 (at paras. 40 to 49):

... I think it is time to say, once and for all in Canada, that there is only one civil standard of proof at common law and that is proof on a balance of probabilities. Of course, context is all important and a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences. However, these considerations do not change the standard of proof...

[...]

In my view, the only practical way in which to reach a factual conclusion in a civil case is to decide whether it is more likely than not that the event occurred.

[...]

It will be for the trial judge to decide to what extent, if any, the circumstances suggest that an allegation is inherently improbable and where appropriate, that may be taken into account in the assessment of

whether the evidence establishes that it is more likely than not that the event occurred. However, there can be no rule of law imposing such a formula.

... In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

[para 83] In this inquiry, I have been mindful of the seriousness of the allegations against the Organizations and have scrutinized the evidence and testimony of the parties. Above, I reviewed various possible sources of the posters that appeared in Edson in 2008, finding those alleged sources inherently improbable. For reasons that follow, I find it more likely than not that the posters were posted by the Organizations.

[para 84] The relationship between the Complainant and both Organizations clearly became strained following the Complainant's resignation after one day of work. The Complainant says that he quit because he was asked to commit fraudulent acts in relation to his duties as a truck driver. The CEO says that the Complainant quit because the Complainant felt that the CEO had backed out of a deal to provide him with a vehicle for personal use. The Complainant says that the CEO and Director of Brooklyn Inc. were angry that he had quit because there was a considerable amount of work waiting and truck drivers were in short supply.

[para 85] A dispute regarding the payment of wages followed, with the Organizations taking the position that they did not have to pay the Complainant until he returned his time ticket and employment documents to them. The Complainant lodged a complaint with Alberta Employment Standards. He sent faxes, letters and e-mails to the Organizations every few days between March 4, 2008 and April 7, 2008 demanding payment, which the CEO found to be very harassing. The CEO alleges that the Complainant also harassed shareholders, the spouses of shareholders, and employees at all hours of the night, which alleged harassment the CEO then raised with the RCMP. The Organizations further believe that the Complainant was responsible for writing fraudulent and damaging comments about the Organizations, the CEO and the Director of Brooklyn Inc. on a website on April 5, 2008. As a result, the CEO contacted his lawyer about the possibility of suing the Complainant for libel or slander. On April 7, 2008, the Complainant provided a statement to the RCMP, in which he responded to the Organizations' allegations that he had harassed shareholders and employees, and in which he made his own allegations that the Organizations had engaged in fraudulent business activity.

[para 86] According to RCMP documentation submitted by the Complainant, the posters first appeared at particular locations in Edson on April 4 or 5, 2008. This was around the same time that the dispute between the Complainant and the Organizations became particularly strained. On April 3, 2008, Alberta Employment Standards had

reached an agreement with the Organizations whereby they would pay the Complainant his wages, even though the Organizations say that he had not returned his time ticket and other employment documents to them. On April 5, 2008, the Complainant allegedly posted the disparaging comments about the Organizations on the internet.

[para 87] At the oral hearing, the CEO asked the Complainant whether he had made the disparaging comments on the internet. The Complainant objected to answering that question, on the basis that it was not relevant and that, if the Organizations wished to pursue an action for defamation, this inquiry was not the proper forum. I did not require the Complainant to indicate whether he had, in fact, made the disparaging comments about the Organizations online. This was because the relevant fact, which was already established, was that the Organizations *believed* that the Complainant had disparaged them, giving a reason (among others) for the Organizations to post the posters. The Organizations had that reason, in April 2008, regardless of whether or not the Complainant admitted, at the oral hearing, to making the online comments.

[para 88] Due to the overall sequence of events, the timing of the posters, and the very acrimonious dispute between the parties, I conclude, on a balance of probabilities, that the Organizations posted the posters. At the relevant time in April 2008, they had both the means and motive to do so. The Organizations are situated in Edson, obtained a copy of the Complainant driver's licence approximately one month before the posters appeared in Edson, and continued to have the driver's licence at the time that the posters appeared. Among all of the individuals and entities who could possibly have had a copy of the Complainant's driver's licence in April 2008, the Organizations were the ones with the clearest reason to post the posters. They had had a falling out with the Complainant when he quit after only one day of work, his wages were reluctantly paid after the Complainant lodged a complaint with Alberta Employment Standards, and the Organizations are certain that the Complainant disparaged their businesses on the internet. I believe that the Organizations posted the posters about the Complainant in order to retaliate against him. I dismiss the other possible sources of the posters as improbable because it is unlikely that the individuals and entities in question had a reason to post the posters and/or it is unlikely that they would have obtained and kept a copy of the Complainant's driver's licence and then proceeded to post the posters in Edson a few to several months later.

[para 89] For clarity, I find that both Organizations posted the posters (i.e., jointly and severally) because both were the employers of the Complainant, both had custody and/or control of the copy of his driver's licence, and both were equally involved in the acrimonious dispute with the Complainant. As indicated earlier, I do not have to determine which particular individual or individuals acting on behalf of the Organizations posted the posters.

[para 90] I again acknowledge the e-mail that the CEO sent on April 11, 2008, in which it appears that he learned about the posters only after they were initially posted. On one hand, it is possible that the CEO fabricated the e-mail after he was interviewed by the RCMP, and that he did post the posters. On the other hand, even if the CEO did not

post the posters, I am nonetheless satisfied that an individual acting for both Organizations posted the posters, whether that individual is the Office Administrator, the Director of Brooklyn Inc., or any other common agent or agents of the Organizations.

[para 91] The posting of the posters was both a use and disclosure of the Complainant's personal information and personal employee information by the Organizations. PIPA does not define the term "disclosure", but it has been found to mean "to make the information available or to release it to ... another person..." (Order P2007-011 at para. 54). In posting the posters, the Organizations made available and released to the public the photograph from the Complainant's driver's licence, as well as the caption about him. PIPA does not define the term "use", but it has been found to mean "to apply ... information for a purpose and includes reproducing the information..." (Order P2007-011 at para. 51; Order P2008-007 at para. 42). The Organizations reproduced the Complainant's photograph from his driver's licence, and applied it for a purpose, when they copied, enlarged and placed it on the posters.

C. If the Organizations used and/or disclosed the Complainant's personal information and/or personal employee information, did they do so in compliance with sections 7, 8, 10, 17, 18, 20 or 21 of PIPA?

[para 92] I have found that both Organizations were responsible for the Complainant's personal information and for ensuring compliance with the Act under section 5 of PIPA. I have also found that both Organizations used and disclosed the Complainant's personal information and personal employee information when they posted the posters. In order for an organization to have the authority to use or disclose an individual's personal information, sections 7, 8, 17 and 20 of PIPA require either (1) the individual's written, oral or deemed consent, (2) notice of the purpose for which the information is being used or disclosed, and a reasonable opportunity for the individual to decline the proposed use or disclosure, or (3) an enumerated use or disclosure for which neither consent nor notice is required. In the case of personal employee information, there is additional authority to use or disclose it, under sections 18 and 21, if the use or disclosure is reasonable and the employee is provided with advance notification. [Amendments to sections 8, 17, 18, 20 and 21 came into force on May 1, 2010, but the foregoing summary remains the case.]

[para 93] The Complainant certainly did not provide written, oral or deemed consent to the use or disclosure of his personal information on the posters that appeared in Edson in April 2008. (Section 10, which sets out when consent is negated, is therefore not relevant.) Further, the Organizations were certainly not authorized to use or disclose the Complainant's personal information, or personal employee information, on the posters without his consent. There was no advance notice or notification, no reasonable opportunity to decline the use or disclosure, no use or disclosure in the context of one of the enumerated circumstances set out in the Act, and no reasonable use and disclosure for any other purpose. There is obviously no justification for the posters.

[para 94] I accordingly conclude that, when the Organizations used and disclosed the Complainant's personal information and personal employee information, they did not comply with sections 7, 8, 17, 18, 20 or 21 of PIPA.

[para 95] Because I have found that there were no other uses of the Complainant's driver's licence information, or disclosures of it by the Organizations, it is not strictly necessary for me to discuss the above issue further. However, the parties made submissions regarding other uses and disclosures of the Complainant's driver's licence that hypothetically might have occurred in the normal course of the Organizations' business activities, namely uses or disclosures by way of client information binders, truck binders, and sending a copy of the driver's licence to clients. I will therefore briefly discuss this issue a bit further for the purpose of providing guidance to organizations in future situations.

[para 96] The Organizations did not allege that the Complainant provided any written consent to the foregoing hypothetical uses and disclosures of the information on his driver's licence. Although Brooklyn Inc. submitted that there had been notice about possible uses or disclosures in the Complainant's employment contract (the "Terms of Employment" document), I found no notice there, and the CEO could not point to any notice in that document, or any other document, at the oral hearing.

[para 97] Instead, the CEO argued that the Complainant had voluntarily provided his driver's licence knowing that it would be used and disclosed for business purposes. This argument is effectively that section 8(2) of PIPA would have applied, had there been other uses or disclosures of the information on the Complainant's driver's licence. It reads as follows:

8(2) An individual is deemed to consent to the collection, use or disclosure of personal information about the individual by an organization for a particular purpose if

(a) the individual, without actually giving a consent referred to in subsection (1), voluntarily provides the information to the organization for that purpose, and

(b) it is reasonable that a person would voluntarily provide that information.

[para 98] At the oral hearing, the CEO said that the Organizations need a copy of the driver's licence of employees who drive trucks for them, and that they would never hire someone who refused to provide a copy. The CEO argued that it was up to the Complainant, on giving his driver's licence, to set limitations on its use and disclosure by either instructing the Office Administrator or putting those limitations in writing. The CEO submitted that the Complainant obviously understood that by, taking the job, the Organizations would hand out a copy of the driver's licence to whoever they felt required it. He said that the Complainant took no issue at the time of supplying his driver's

licence. The CEO further argued that it was reasonable for employees to provide a copy of their driver's licences for the various aforementioned business purposes because all of the Organizations' employees who drove trucks did so.

[para 99] The Organizations' arguments attempt to significantly broaden the concept of deemed consent, contrary to the intention and express wording of section 8(2). Their arguments are effectively that an individual's voluntary provision of personal information grants an organization the authority to use and disclose that information for any purpose. The Organizations are under the improper assumption that it is up to the individual to set limits, in advance, on the use and disclosure of his or her personal information. Finally, the Organizations wrongly argue that the use and disclosure of personal information is reasonable simply by virtue of the fact that everyone in the past has provided the same type of personal information without any objection.

[para 100] For there to be deemed consent under section 8(2) of PIPA, there must not only be a voluntary provision of personal information. The information must be provided *for a particular purpose*, and it must be *reasonable* for the individual to voluntarily provide the information for that purpose. In fairness to the Organizations, I note that the CEO did go on to argue that placing a copy of driver's licences in client information binders, placing them in truck binders and sending them to clients were all part of standard industry practice, which is relevant to the question of deemed consent, although not determinative.

[para 101] The Complainant disputed that the foregoing practices were standard in the industry. He said that that he would never have given his driver's licence to the Organizations had he been aware of these potential uses and disclosures. As it is not necessary for me to do so, I will not actually decide whether or not the foregoing uses and disclosures were standard industry practice, or whether or not it would have been reasonable for the Complainant to voluntarily provide his driver's licence to the Organizations for the purposes of those uses and disclosure under section 8(2).

D. If the Organizations used and/or disclosed the Complainant's personal information, did they do so for a reasonable purpose and to a reasonable extent, in compliance with sections 16 and 19 of PIPA?

[para 102] Sections 16(1) and 19(1) of PIPA require personal information (of which personal employee information is a subset) to be used and disclosed only for purposes that are reasonable, and section 16(2) and 19(2) require the information to be used and disclosed only to the extent that is reasonable for meeting those purposes. They read as follows:

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.

...

19(1) An organization may disclose personal information only for purposes that are reasonable.

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

[para 103] The parties disagreed as to whether placement of a copy of the Complainant's driver's licence in client information binders, or in truck binders, would be for reasonable purposes, and to an extent that is reasonable for meeting those purposes. They also disagreed as to whether it would have been proper to give a copy of the Complainant's driver's licence to specific clients. For instance, a driving abstract, which does not have a photograph, might also assure a client of an employee's driving qualifications. It is not necessary for me to address these questions, given that I have found that a copy of the Complainant's driver's licence was not placed in any client information binders, placed in any truck binders, or given to any clients.

[para 104] The only use and disclosure of the Complainant's personal information by the Organizations that I have found in this inquiry is the use and disclosure of his personal information on the posters. This was obviously not for any reasonable purpose. I conclude that the Organizations did not use or disclose the Complainant's personal information for purposes that were reasonable, or to an extent that was reasonable for meeting any purposes. The Organizations therefore contravened both sections 16 and 19 of PIPA.

E. Did the Organizations disclose accurate personal information about the Complainant, in compliance with section 33 of PIPA?

[para 105] Section 33 of PIPA reads as follows:

33 An organization must make a reasonable effort to ensure that any personal information collected, used or disclosed by or on behalf of an organization is accurate and complete.

[para 106] The issue under section 33 [amendments to which came into force on May 1, 2010] was identified in the Notice of Inquiry because the posters with the Complainant's photograph said "Beware Keep An Eye On Your Children". I find that this was inaccurate personal information about the Complainant, as it suggested that he was a risk to children when, in fact, the RCMP determined that he was not.

[para 107] At the oral hearing, the Organizations argued that they were not responsible for any inaccurate information because they did not post the posters. However, I have found that the Organizations posted the posters. I therefore also find that the Organizations contravened section 33 by failing to make a reasonable effort to ensure that the Complainant's personal information that they used and disclosed was accurate.

F. Did the Organizations make reasonable security arrangements to protect the Complainant's personal information, in compliance with section 34 of PIPA?

[para 108] Section 34 of PIPA reads as follows:

34 An organization must protect personal information that is in its custody or under its control by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure, copying, modification, disposal or destruction.

[para 109] An organization bears the burden of proving that it has made reasonable security arrangements to protect the personal information that is in its custody or under its control, as it is in the best position to provide evidence of the steps it has taken (see Order F2007-001 at para. 63, which discusses the burden of public bodies under the analogous section 38 of the *Freedom of Information and Protection of Privacy Act*). To be in compliance with section 34 of PIPA, an organization is required to guard against reasonably foreseeable risks; it must implement deliberate, prudent and functional measures that demonstrate that it considered and mitigated such risks; the nature of the safeguards and measures required to be undertaken will vary according to the sensitivity of the personal information collected (Order P2006-008 at para. 99).

[para 110] Possibilities were raised in this inquiry that copies of the Complainant's driver's licence may have been placed in client information binders or truck binders, and that these binders may have been located in unlocked trucks, a well-house and elsewhere. However, I found earlier that a copy of the Complainant's driver's licence was, in fact, not placed in any binders. The Organizations therefore did not fail to protect the Complainant's personal information in this regard.

[para 111] A copy of the Complainant's driver's licence was kept at the Organizations' joint office and both Organizations had custody and/or control of the Complainant's personal information found on it. Both Organizations were therefore subject to the requirements of section 34. With respect to the security arrangements in place, the CEO was unclear and inconsistent. He testified that the copy of the driver's licence was kept in a filing cabinet in the Office Administrator's office. At one point during the oral hearing, he stated that employee information is kept locked, but it was unclear whether he meant that it is locked in the office or locked in the cabinet. This was clarified, somewhat, when he said that the filing cabinet is not locked, but that the interior office doors and/or the outside office doors are locked. The CEO testified that very few people within the Organizations have access to sensitive employee

information, but he also said that the Organizations did not consider an employee's driver's licence to be among that sensitive information (in contrast to tax information and social insurance numbers, for example). Finally, the CEO stated that the office landlord had access to the office, and that he believed that his and the Office Administrator's spouses also had keys.

[para 112] The Complainant argued that the fact that the CEO seemed to be speculating as to who does and does not have keys to the office shows, in and of itself, that no reasonable security arrangements were in place.

[para 113] With their written submissions, the Organizations included an e-mail, dated April 11, 2008, from the CEO to the Office Administrator, in which the CEO wrote:

[...] [An RCMP constable] told me we are responsible to ensure that our employee files are confidential which I am sure they are. I am going to take legal action against this nutcase [the Complainant] so I don't want to destroy any of our file on him, however I would like you to ensure that any pictures of his drivers license are kept in the safety deposit box at the bank until they are needed in court. Also ensure the rest of his file is secure although [sic] it is mostly made up of faxes he has sent to everyone from Edson to Hinton and then Calgary.

In an e-mail dated April 11, 2008, the Office Administrator replied to the CEO as follows:

I have gone and checked on [the Complainant's] file and have removed the copy of his safety tickets and drivers license to the safety deposit box at the Treasury Branch. Otherwise his file, containing every ... e-mail, fax or letter is in the locked cabinet in my office and no one has access to it.

To me, the above e-mails suggest that the Office Administrator took steps to lock the filing cabinet, and secure the Complainant's personal information, only after the CEO asked her to do so on April 11, 2008.

[para 114] On consideration of the e-mail exchange and the CEO's testimony at the oral hearing, I find that the copy of the driver's licence was kept in an unlocked filing cabinet in the office of the Office Administrator, and that the office landlord, and the spouses of the CEO and the Office Administrator, had access to that unlocked cabinet. Such a situation does not constitute a reasonable security arrangement against such risks as unauthorized access, collection, use, disclosure, copying, modification, disposal or destruction of personal information. The Organizations' office landlord and the spouses of its employees should not have had access to the Complainant's driver's licence information, given the sensitivity of the information and the fact that the landlord and spouses do not even work for the Organizations.

[para 115] I conclude that both Organizations failed to make reasonable security arrangements to protect the Complainant's personal information found on his driver's licence. Therefore, they contravened section 34 of PIPA.

V. ORDERS

[para 116] I make these Orders under section 52 of PIPA.

[para 117] I find that both Organizations, Murphy Industrial Oilfield Inc. and Brooklyn Oilfield Services Inc., were responsible for the Complainant's personal information and for ensuring compliance with the Act under section 5 of PIPA.

Order P2009-013 (Case file number P0960)

[para 118] I find that Murphy Industrial Oilfield Inc. used and disclosed the Complainant's personal information by placing an enlargement of his driver's licence photograph, and a statement about him, on posters in Edson in April 2008. This was not in compliance with sections 7, 8, 16, 17, 18, 19, 20 or 21 of PIPA.

[para 119] I find that Murphy Industrial Oilfield Inc. disclosed inaccurate personal information about the Complainant by making the statement about him on the posters. This was not in compliance with section 33 of PIPA.

[para 120] Under section 52(3)(e) of PIPA, I order Murphy Industrial Oilfield Inc. to stop using and disclosing the Complainant's personal information in contravention of the Act.

[para 121] I find that Murphy Industrial Oilfield Inc. did not make reasonable security arrangements to protect the Complainant's personal information. This was not in compliance with section 34 of PIPA.

[para 122] Under section 52(3)(a), I order Murphy Industrial Oilfield Inc. to perform its duty to protect the Complainant's personal information.

[para 123] Under section 52(4), I specify, as a term of this Order, that Murphy Industrial Oilfield Inc. ensure that its employees and agents are made aware of the Organization's obligations under PIPA. Compliance with this portion of the Order can be achieved by communicating the requirements of PIPA to employees and agents of Murphy Industrial Oilfield Inc. in a way that the Organization considers appropriate.

[para 124] I further order Murphy Industrial Oilfield Inc. to notify me, in writing, within 50 days of receiving a copy of this Order that it has complied with the Order. The notice to me should include a description of what the Organization did to comply with the preceding paragraph of this Order.

Order P2009-014 (Case file number P0961)

[para 125] I find that Brooklyn Oilfield Services Inc. used and disclosed the Complainant's personal information by placing an enlargement of his driver's licence photograph, and a statement about him, on posters in Edson in April 2008. This was not in compliance with sections 7, 8, 16, 17, 18, 19, 20 or 21 of PIPA.

[para 126] I find that Brooklyn Oilfield Services Inc. disclosed inaccurate personal information about the Complainant by making the statement about him on the posters. This was not in compliance with section 33 of PIPA.

[para 127] Under section 52(3)(e) of PIPA, I order Brooklyn Oilfield Services Inc. to stop using and disclosing the Complainant's personal information in contravention of the Act.

[para 128] I find that Brooklyn Oilfield Services Inc. did not make reasonable security arrangements to protect the Complainant's personal information. This was not in compliance with section 34 of PIPA.

[para 129] Under section 52(3)(a), I order Brooklyn Oilfield Services Inc. to perform its duty to protect the Complainant's personal information.

[para 130] Under section 52(4), I specify, as a term of this Order, that Brooklyn Oilfield Services Inc. ensure that its employees and agents are made aware of the Organization's obligations under PIPA. Compliance with this portion of the Order can be achieved by communicating the requirements of PIPA to employees and agents of Brooklyn Oilfield Services Inc. in a way that the Organization considers appropriate.

[para 131] I further order Brooklyn Oilfield Services Inc. to notify me, in writing, within 50 days of receiving a copy of this Order that it has complied with the Order. The notice to me should include a description of what the Organization did to comply with the preceding paragraph of this Order.

Wade Riordan Raaflaub
Adjudicator