

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2018-09

December 21, 2018

**MAXIM RESEARCH AND CONSULTING CORPORATION LTD.
ELISE J. LAVIGNE PROFESSIONAL CORPORATION**

Case File Numbers 000695 and 001194

Office URL: www.oipc.ab.ca

Summary: The Complainant made a complaint to the Commissioner that Maxim Research and Consulting Corporation Ltd (Maxim) had collected, used, and disclosed information about her employment history, as well as her motor vehicle registration and credit report information without her consent and in contravention of the *Personal Information Protection Act*. She complained that the Organization had provided this information to a law firm, Elise J. Lavigne Professional Corporation (the law firm), which then collected and used the information, in order to include it in an affidavit sworn by her spouse's former wife and filed in legal proceedings by the law firm.

The Adjudicator found that the collection, use, and disclosure of the Complainant's personal information by Maxim and the collection and use of the information by the law firm were reasonable for the purposes of legal proceedings. As a result, the Organizations did not require the Complainant's consent to collect, use, or disclose her personal information. The Adjudicator determined that section 4 of PIPA applied to the law firm's act of submitting the personal information into Court, which meant that PIPA did not apply to that extent.

Statutes Cited: AB: *Personal Information Protection Act*, S.A. 2003, c. P-6.5 ss. 2, 4, 7, 8, 11, 14, 16, 19, 17, 20, 52; *Consumer Protection Act*, R.S.A. 2000, c. 26.3, s. 44

Authorities Cited: AB: Orders P2005-001, P2006-008, P2017-05

I. BACKGROUND

[para 1] The Complainant made a complaint to the Commissioner that Maxim Research and Consulting Corporation Ltd (Maxim) had collected, used, and disclosed information about her employment history, as well as her motor vehicle registration and credit report information without her consent and in contravention of the *Personal Information Protection Act* (PIPA). She complained that Maxim had provided this information to a law firm, Elise J. Lavigne Professional Corporation (the law firm), and that her personal information had then been included in an affidavit sworn by her spouse's former wife and filed in legal proceedings by the law firm.

[para 2] The Commissioner authorized a senior information and privacy manager to investigate and attempt to mediate the issues raised by the Complainant. Following this process, the matter was scheduled for a written inquiry.

II. ISSUES

Issue A: Did the Organizations collect, use, and / or disclose “personal information” of the Complainant as that term is defined in PIPA?

Issue B: If yes, did the Organizations collect, use and / or disclose the information contrary to, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)? In particular,

- a. Did the Organizations have the authority to collect, use and/or disclose the information without consent, as permitted by sections 14, 17 or 20 of PIPA?**
- b. If the Organizations did not have the authority to collect, use and/or disclose the information without consent, did the Organizations obtain the Complainant's consent in accordance with section 8 of the Act before collecting, using or disclosing the information?**

Issue C: Did the Organizations collect, use or disclose the information contrary to, or in accordance with, sections 11(1), 16(1) and 19(1) of PIPA (collection, use and/or disclosure for purposes that are reasonable)?

Issue D: Did the Organizations collect, use or disclose the information contrary to, or in accordance with, sections 11(2), 16(2) and 19(2) of PIPA (collection, use and/or disclosure to the extent reasonable for meeting the purposes)?

III. DISCUSSION OF ISSUES

Issue A: Did the Organizations collect, use, and / or disclose “personal information” of the Complainant as that term is defined in PIPA?

[para 3] The Complainant has the initial or “evidential” burden of proof, in that she must adduce some evidence as to why she believes her personal information was collected, used, and disclosed by Maxim and the law firm; the Organization then has the burden to show that its disclosure of the Complainant’s personal information was in accordance with PIPA (Order P2005-001 at para. 8; Order P2006-008 at para. 11).

[para 4] The Complainant submitted evidence to support her position that the Organization collected, used, and disclosed her personal information. Among these is a report authored by Maxim, which contains information about her employment history, credit history and motor vehicle registry. This report constitutes Exhibit “B” of an affidavit sworn by Maxim and the law firm’s client.

[para 5] The Complainant also submitted an email from Maxim to the former wife’s lawyer. The email contains a letter attachment. This letter states:

[The client] has asked me to provide you with the following information regarding another motor vehicle that is registered to [the Complainant].

This letter contains the Complainant’s name and details about a motor vehicle registered to her.

[para 6] In its initial submissions, Maxim stated the following:

[The Director of Maxim] is a licensed private investigator and is employed by his company, Maxim in that capacity. In his capacity as a private investigator, [the Director of the Organization] was retained by [a] Barrister and Solicitor, of the law firm Daunais McKay Harms and Jones. He was retained on a litigation privileged basis and as such I am not able to breach solicitor/client confidentiality and provide you with all the information you have requested.

[para 7] The evidence submitted by the Complainant supports finding that Maxim collected personal information regarding her employment history, credit history, and motor vehicle registration. While the circumstances in which Maxim obtained the Complainant’s personal information are unclear, I infer that it did so, given that it could not have included this information in a report and in an email for its client’s lawyer had it not first obtained it. In addition, Maxim used the information to create the report and the letter, and it disclosed the Complainant’s personal information when it provided the report and the letter to law firm at the request of the Complainant’s spouse’s former wife, who was the client of both Maxim and the law firm. In addition, the evidence establishes that the law firm collected the information provided by Maxim, and then used it for legal proceedings.

[para 8] Section 4(3)(k) of PIPA establishes that information in a court file is exempt from the application of the Act. The affidavit and its exhibits, which constitute the evidence of collection, use, and disclosure in this case, have stamps indicating that they were filed with the Court. However, the complaint is not that the affidavit discloses personal information, but that the Complainant’s personal information was collected, used, and disclosed in order to create the affidavit and its attached exhibits, and the

affidavit and the exhibits are evidence of this. As a result, section 4(3)(k) does not apply to the collection, use, and disclosure of the Complainant's personal information that took place prior to filing the affidavit. However, it does apply to the disclosure of the Complainant's personal information in Court. As a result, the disclosure of the Complainant's personal information in Court is not an issue I am authorized to address.

Issue B: If yes, did the Organizations collect, use and / or disclose the information contrary to, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)? In particular,

- a. Did the Organizations have the authority to collect, use and/or disclose the information without consent, as permitted by sections 14, 17 or 20 of PIPA?**
- b. If the Organizations did not have the authority to collect, use and/or disclose the information without consent, did the Organizations obtain the Complainant's consent in accordance with section 8 of the Act before collecting, using or disclosing the information?**

[para 9] Section 7(1) of PIPA states:

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

- (a) collect that information unless the individual consents to the collection of that information,*
- (b) collect that information from a source other than the individual unless the individual consents to the collection of that information from the other source,*
- (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 10] Section 14 of PIPA contains an exhaustive list of circumstances in which an organization is authorized to collect personal information without the consent of the individual whom the personal information is about. It states, in part:

14 An organization may collect personal information about an individual without the consent of that individual but only if one or more of the following are applicable:

(d) the collection of the information is reasonable for the purposes of an investigation or a legal proceeding [...]

[para 11] Section 17 of PIPA contains an exhaustive list of circumstances in which an organization is authorized to use personal information without the consent of the individual whom the personal information is about. It states, in part:

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:

(d) the use of the information is reasonable for the purposes of an investigation or a legal proceeding [...]

[para 12] Section 20 of PIPA contains an exhaustive list of circumstances in which an organization is authorized to disclose personal information without the consent of the individual whom the personal information is about. It states, in part:

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

(m) the disclosure of the information is reasonable for the purposes of an investigation or a legal proceeding [...]

[para 13] Section 2 of PIPA explains what is meant by “reasonable” when this term appears in the Act. It states:

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 14] From the foregoing, I conclude that where PIPA uses the word “reasonable”, the test of what is “reasonable” under the Act is objective, rather than subjective. In other words, it is not whether an organization or complainant considers an action to be reasonable, but whether a reasonable person, apprised of the facts, would consider the action reasonable. Sections 14(d), 17(d), and 20(m), reproduced above,

authorize the collection, use, or disclosure of personal information without consent, if doing so is *reasonable* for the purposes of an investigation or legal proceeding.

[para 15] Maxim initially declined to address this issue, citing solicitor-client privilege. However, on November 26, 2018, Maxim provided additional submissions. It stated:

[...] the information in question was collected for a legal proceeding and used in that legal proceeding in accordance with s. 14(d), s. 17(d) and 20(m) PIPA. [The Organization] was retained by [the law firm] on August 27, 2014, on a Litigation Privileged Basis. The report was provided to [the law firm] on that basis for the purpose of litigation in the Court of Queen's Bench.

[para 16] The Complainant notes that she was not a party to the litigation for which Maxim collected, used, and disclosed her credit and employment history, and motor vehicle registration information. The cover page of the affidavit the Complainant submitted for the inquiry supports finding that she is not a party to the litigation, as her name does not appear in the style of cause.

[para 17] The law firm submitted an affidavit explaining the significance of the Complainant's personal information for the Court case. The law firm explained that the personal information had been collected to determine whether the vehicles in which the client's children were being driven by its client's former spouse and the Complainant were insured, and also to ensure that assets had not been improperly transferred.

[para 18] Although the Complainant was not a party to the litigation for which her personal information was collected, I am satisfied by the law firm's and Maxim's explanation that the Complainant's personal information was collected, used, and disclosed because it was relevant to matters in issue in the proceedings. I find that it was reasonable for both organizations to collect, use, and disclose the Complainant's personal information for this purpose.

[para 19] Initially, it appeared possible that the information that is the subject of the complaint was obtained from a credit reporting agency, contrary to section 44(2) of the *Consumer Protection Act* R.S.A. 2000, c. 26.3 (CPA). Section 44 of the CPA states, in part:

44(1) A reporting agency, and an officer, agent or employee of a reporting agency, may furnish a report to a person only in the following circumstances:

(a) if there are reasonable grounds to believe that the person intends to use the information in the report

(i) in connection with the extension of credit to the individual to whom the report pertains, with the individual's express consent,

- (i.1) in connection with the collection of a debt from the individual to whom the report pertains,*
- (ii) in connection with the entering into or the renewal of a tenancy agreement by the individual to whom the report pertains with the individual's express consent,*
- (iii) for employment purposes, with the express consent of the individual to whom the report pertains,*
- (iv) in connection with the underwriting of insurance involving the individual to whom the report pertains, with the individual's express consent, or*
- (v) to determine the eligibility of an individual to whom the report pertains under a law, if the information is relevant to the eligibility requirement;*
- (b) if there are reasonable grounds to believe that the person has a direct business requirement for information in the report as a result of a business transaction respecting the individual to whom the report pertains with the individual's express consent;*
- (c) if the report is furnished to the Director or an inspector, the government of Canada or of a province or territory, a municipality in Canada or any of their agencies;*
- (d) if the person is the individual to whom the report pertains or if the person has the express consent of the individual to obtain the report;*
- (e) in response to the order of a court;*
- (f) in circumstances specified in the regulations.*

(2) No person may obtain a report from a reporting agency except in the circumstances referred to in subsection (1).

[...]

Section 44(2) makes it an offence for a person to collect a credit report (and the information it contains) for any purpose other than those enumerated in section 44(1). Collecting a credit report for the purpose of litigation is not a purpose authorized by section 44(1). If it were the case that the Organizations collected the Complainant's credit report from a credit reporting agency, it would be arguable that it would not be reasonable to collect the personal information for legal proceedings, given that it would be an offence under section 44(2) of the CPA to do so.

[para 20] I asked the Complainant to gather evidence as to whether her credit report had been accessed from a credit reporting agency. She responded:

This is in response to your request for additional documentation regarding my credit information.

At this time I have no additional documentation to provide as there's no relevant information from Equifax as there's no "hard pull" indicating my credit was affected, thus no reflection is present.

I would like to provide the following information on this matter that stems from a recorded conversation with Service Alberta, [name of employee]. He provided me the responses from [the Organization and the Organization's client] (client [Maxim] was working on behalf of) from a telephone conversation they had as to how my report was obtained;

1. [The Organization] advised [the Service Alberta employee] that he obtained my credit report from my garbage cans. This is false information as to how he obtained the actual copy. Given [the head of Maxim's] career as a Police Officer and Detective he has resources available to him which he has no doubt utilized, uncaught, and continues to take advantage of. In addition to this, if this is the statement he has stuck with, I would like him to provide the information as where he obtained my husband's credit report from as well, as that too, was included within the "report" he prepared. I can forward copies of that if necessary. This is NOT a coincidence.

a) I have previously requested a copy of the recording from Service Alberta and was denied. The intention behind this was to complain against [the head of Maxim] in a criminal aspect as he had admitted to being on my property, unlawfully. The garbage bins in question sit on the parking pad for collection which is well within the property line.

2. During the conversation with [the Service Alberta employee], [the Organization's client] indicated she was asking for information from her underage sons. [...]

It is also worth noting that [...] (Maclin Ford) was named in my privacy complaint as well as CC'd on communications with [the Organization]. I had purchased a financed vehicle from Ford (Ford Edge) in 2012 and a copy of my credit history would be attached to my file from the time of purchase. In addition, my husband, [...] also had a financed vehicle from Ford and a copy of his credit report would have also been on file.

On a personal note, I find it abhorrent that a Police Officer/Detective, Lawyer, among others, can get away with their actions without recourse as there is not much in place in Alberta regarding Privacy laws and without a doubt, I do believe these people did this full well knowing that! By [the law firm's] own admission, the documents were "included in error" which is an indication to me they were not intending to be caught.

[para 21] From the Complainant's response to my question, I conclude that neither of the Organizations accessed her credit report from a credit reporting agency. As a result, section 44(2) of the CPA is not engaged.

[para 22] Maxim disputes that a conversation between its representative and Service Alberta took place as the Complainant claims. Regardless, even assuming that the Organization obtained information from the Complainant's garbage, or that it obtained it from the client in the circumstances the Complainant alleges, (there is insufficient evidence before me to make findings of this kind) PIPA is not concerned with *how*

information is collected, but an organization's *purpose* for collecting personal information.

[para 23] The evidence of Maxim and the law firm establishes that they considered it necessary to obtain the Complainant's personal information to prove points they considered to be in issue in legal proceedings involving their mutual client. The evidence does not establish that either Organization obtained the information through unlawful means. As the personal information in question was related to the case the law firm intended to make in Court, and as it has not been established that it was collected unlawfully, I find that the collection of the personal information, its use in legal proceedings, and the disclosure of the information from Maxim to the law firm, were reasonable for the purpose of the legal proceedings for which the personal information was collected, used, and disclosed. I therefore find that the collection, use, and disclosure were authorized under sections 14(d), s. 17(d) and 20(m) of PIPA respectively.

[para 24] As sections 14(d), s. 17(d) and 20(m) authorized the collection, use, and disclosure of the Complainant's personal information, it follows that the collection, use, and disclosure were in compliance with section 7 of PIPA.

Issue C: Did the Organizations collect, use or disclose the information contrary to, or in accordance with, sections 11(1), 16(1) and 19(1) of PIPA (collection, use and/or disclosure for purposes that are reasonable)?

[para 25] Sections 11(1), 16(1), and 19(1) impose duties on an organization to collect, use, and disclose personal information only for purposes that are reasonable. The Organization bears the burden of proving that it complied with the terms of section 11(1), 16(1), and 19(1).

[para 26] Section 11(1) states:

11(1) An organization may collect personal information only for purposes that are reasonable.

[para 27] Section 16(1) states:

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

[para 28] Section 19(1) states:

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

[para 29] The law firm drew to my attention Order P2017-05, in which the Adjudicator stated:

Sections 11(1), 16(1), and 19(1) of the Act require that an organization may only collect/use/disclose personal information for purposes that are reasonable.

I have found that the collection/use/disclosure of the Complainant's personal information was done for the purposes of a legal proceeding. I find that defending or advancing a legal proceeding is a reasonable purpose.

[para 30] I have already found that the Organizations' collection, use and disclosure of the Complainant's personal information were reasonable for the purpose of legal proceedings. I agree with the Adjudicator in Order P2017-05 that it follows from this finding that I find that the collection, use, and disclosure of the Complainant's personal information were reasonable.

Issue D: Did the Organizations collect, use or disclose the information contrary to, or in accordance with, sections 11(2), 16(2) and 19(2) of PIPA (collection, use and/or disclosure to the extent reasonable for meeting the purposes)?

[para 31] Sections 11(2), 16(2), and 19(2) impose duties on an organization to collect, use, and disclose personal information only for purposes that are reasonable.

[para 32] Section 11(2) states:

11(2) Where an organization collects personal information, it may do so only to the extent that is reasonable for meeting the purposes for which the information is collected.

[para 33] Section 16(2) states:

16(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 34] Section 19(2) states:

19(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 35] Having reviewed the law firm's evidence and submissions, I am satisfied that the Organizations collected only the personal information necessary for the purposes of making their client's case in the litigation and that they did not collect, use, or disclose the personal information for any other purpose. I find that the Organizations complied with sections 11(2), 16(2), and 19(2) of PIPA.

[para 36] I acknowledge that the law firm took the step of applying to the Court to have the Complainant's information struck from the record. However, the only

conclusion I can draw from this action is that it hoped to settle the complaint without an inquiry. This action cannot be interpreted as an admission that it violated PIPA.

IV. ORDER

[para 37] I make this order under section 52 of PIPA.

[para 38] I confirm that the Organizations did not contravene PIPA.

Teresa Cunningham
Adjudicator